S. HRG. 98-952

OVERSIGHT OF THE INDIAN CHILD WELFARE ACT OF 1978

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

OVERSIGHT ON THE IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT OF 1978

APRIL 25, 1984
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE
37-608 O WASHINGTON : 1984

S411-2
~~[S961-26]~~

SELECT COMMITTEE ON INDIAN AFFAIRS

MARK ANDREWS, North Dakota, *Chairman*

BARRY GOLDWATER, Arizona	JOHN MELCHER, Montana
SLADE GORTON, Washington	DANIEL K. INOUYE, Hawaii
FRANK H. MURKOWSKI, Alaska	DENNIS DECONCINI, Arizona

PAUL ALEXANDER, *Staff Director*

CONTENTS

WITNESSES

Page
Aguilar, Michelle, Indian child welfare coordinator, Suquamish Tribe, State of Washington 206
Prepared statement 208
Almenas, Jeanne, deputy director of human services, Penobscot Indian Nation 241
Amelia, Linda, director, Comanche Foster Care Review Board, Lawton, OK 122
Argel, Greg, program assistant, Association on American Indian Affairs, Inc 51
Blanchard, Evelyn, president, Association of American Indian and Alaska Native Social Workers 96
Prepared statement 99
Butler, Ray, Chief, Division of Social Services, Bureau of Indian Affairs 2
Dorsay, Craig J., attorney representing the Navajo Nation, prepared statement 163
Eberhard, Eric, Deputy Attorney General, Department of Justice, Navajo Indian Nation 158
Ferro, Frank, Deputy Associate Commissioner, Administration for Children, Youth and Families, HHS 8
Fritz, John W., Deputy Assistant Secretary for Indian Affairs (Operations), Bureau of Indian Affairs 2
Prepared statement 6
Hirsch, Bertram E., attorney, representing the Association on American Indian Affairs, Inc 51
Kahrahrah, Bernard, chairman, Comanche Indian Tribe, prepared statement 124
Krenzke, Ted, Director of Indian Services, Bureau of Indian Affairs 2
Krepps, Ethel C., president, Oklahoma Indian Child Welfare Association 105
Prepared statement 109
Lamebull, Larry, director of children's services, Puyallup Indian Tribe 258
McCloud, Connie, member, tribal council, Puyallup Indian Tribe 258
McClure, Elmira, director, Potawatomi Indian Child Welfare Program, Saint Augustine's Center, Chicago, IL 239
Prepared statement 239
Mendoza, Jake, director, child outreach program, Minneapolis Urban Center 211
Prepared statement 214
Pié, Maureen, attorney at law, Maniilaq Association, Kotzebue, AK 155
Reyes, Louise Zokan-Delos, Senior Indian Child Welfare Specialist, Bureau of Indian Affairs 8
Robles, Tony, coordinator, Indian Child Welfare Act Program, Native American Center, Oklahoma City, OK 176
Prepared statement 179
Rust, David A., Director, Office of Policy and Legislation, Department of Health and Human Services 8
Sampson, Melvin, chairman, Legislative Committee, Yakima Indian Nation 133
Prepared statement 137
Sappier, James, representing the governor and tribal council, Penobscot Indian Nation 241
Prepared statement 244
Sharp, Wanda, director, child advocacy program, Mississippi Band of Choctaw Indians 174
Silvernail, John, family service specialist, Central Maine Indian Association 241
Prepared statement 252
Starr, Marie, group home director, Muckleshoot Indian Tribe, Auburn, WA 139
Prepared statement 143

Page
Tallakson, Joe, Sense, Inc., for the Lummi Indian Tribe 153
Prepared statement 154
Unger, Steven, executive director, the Association on American Indian Affairs, Inc 51
Prepared statement 54
Wichlacz, Casimer, Deputy Commissioner, Administration for Native Americans, HHS 8
Wood, Mary, director, Native American Family and Child Service Program 172

MATERIAL SUBMITTED FOR THE RECORD

Paper prepared by the Administration for Native Americans, HHS, in re Indian adoption issues, submitted by A. David Lester, Commissioner, ANA .. 17
Prepared statement of the Association of American Indians and Alaska Native Social Workers, submitted by Evelyn Blanchard 99
Prepared statement of Bernard Kahrahrah, chairman, Comanche Indian Tribe, submitted by Linda Amelia, director, Comanche Foster Care Review Board 124
Prepared statement of the Navajo Nation, submitted by Eric Eberhard, deputy attorney general, Navajo Indian Nation 163

APPENDIX

ADDITIONAL MATERIAL RECEIVED FOR THE RECORD

Letter from Dan Little Axe, governor, Absentee Shawnee Tribe of Oklahoma; to Senator Andrews 261
Letter from Richard M. Milanovich, chairman, tribal council, Agua Caliente Band of Cahuilla Indians; to Senator Andrews 263
Prepared testimony of the San Francisco American Indian Center presented by Phil Tingley, manager, Human Development Division of the Corporation for American Indian Development 264
Prepared testimony of the Boston Indian Council, Inc., submitted by Clifford Saunders, executive director 266
Prepared testimony of the Burns Paiute Tribe, submitted by Vernon Shake Spear, chairman 272
Prepared testimony of the Omaha and Winnebago Tribes of Nebraska, submitted by Norma Stealer and Jessiline Anderson, respectively 277
Letter from Joseph K. Lumsden, tribal chairman, the Sault Ste. Marie tribe of Chippewa Indians; to Senator Andrews 282
Prepared testimony of Ross O. Swimmer, principal chief, Cherokee Nation of Oklahoma 283
Letter from Al Aubertin, chairman, Colville Confederated Tribes Business Council, with enclosed resolutions; to Senator Andrews 296
Prepared testimony of the Oregon Legislative Commission on Indian Services, submitted by Katherine M. Gorospe, executive secretary 300
Prepared testimony of the Confederated Tribes of Siletz Indians of Oregon 303
Statement of the Consortium of Coastal Indian Rancherias, Indian Child and Family Services, submitted by Julie Mannarino, MSW, program coordinator 310
Letter from Edna Charley, executive director, Copper River Native Association; to Senator Andrews 314
Letter from Michael C. Parish, executive director, the Inter-Tribal Council of Michigan, Inc.; to Senator Andrews 315
Letter from Wallace Murray, chairman, Iowa Tribe of Oklahoma; to Senator Andrews 317
Testimony of the Five Sandoval Indian Pueblos, Inc., submitted by Ramus Suina, chairman 320
Testimony of Kawerak, Inc., Nome, AK, submitted by Mary Miller, tribal operations and rights protection officer 325
Letter from Julia Roubideaux, Kiowa child welfare program specialist, Kiowa Tribe of Oklahoma; to Senator Andrews 329
Prepared statement of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians 330
Letter from Darrell Wadena, president, the Minnesota Chippewa Tribe; to Senator Andrews 333

Page
Letter from Ethel Krepps, ICWA attorney/project manager, Native American Coalition of Tulsa, Inc.; to Senator Andrews 336
Prepared statement of the Native American Rehabilitation Association, submitted by Sidney Ann Brown, Blackfeet, executive director 337
Letters from the Oneida Tribe of Indians of Wisconsin; to Senator Andrews 341
Letters from the Pyramid Lake Paiute Tribal Council; to Senator Andrews 346
Letter from Arnold J. Sowmick, Sr., tribal chairman, the Saginaw Chippewa Indian Tribe; to Senator Andrews 348
Prepared statement of Save the Children, submitted by Dr. Helen Scheirbeck, director, American Indian Nations Program 350
Prepared statement of the Seattle Indian Center, James Price, chairman of the board (Tlingit) 354
Letter from Andrew Hope III, executive director, Sitka Community Association, with enclosures; to Senator Andrews 358
Prepared statement of Claudia R. Long, M.S.W., Indian Child Welfare Program Coordinator, The Urban Indian Council, with enclosures 362
Letter from Don Milligan, MSW, Department of Social and Health Services, State of Washington, with enclosures 372
Letter from Faye E. Thunder, Indian child welfare coordinator, Wisconsin Winnebago Tribe; to Senator Andrews 423
Letter from Alvin R. Zephier, chairman, Yankton Sioux Business and Claims Committee; to Senator Andrews 425
Letter from Sandra L. Hill, chairperson, Oneida Child Protective Board; to Senator Andrews 426

OVERSIGHT OF THE INDIAN CHILD WELFARE ACT OF 1978

APRIL 25, 1984

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:45 a.m., in room SD 106, Dirksen Senate Office Building, Senator Mark Andrews (chairman of the committee) presiding.

Present: Senators Andrews and Gorton.

Staff present: Paul Alexander, staff director; Peter S. Taylor, general counsel; Debbie Storey, legislative assistant; Max Richtman, minority staff director; Gertrude Wilson, secretary.

Senator ANDREWS. The hearing will come to order.

Today, we are conducting an oversight hearing on one of the most important pieces of legislation to have been produced by this committee; the Indian Child Welfare Act.

The purpose of the act is to protect the most valuable resources of Indian people; their children. This unique legislation, passed in 1978, is Congress effort to address the critical situation, documented by the American Indian Policy Review Commission, of Indian children in extremely high numbers being placed in adoptive and foster-care settings with non-Indian families. For many of these children, the placements effectively terminated their tribal ties and identity. The vast majority of these placement decisions were being made by non-Indian social service agencies and courts, without any viable Indian input.

The Indian Child Welfare Act reinforces tribal jurisdiction over child-welfare issues, creates preferences for placements with Indian families where possible, provides a mechanism for Indian participation in non-Indian judicial settings, and provides for the funding of Indian family service and child-welfare programs.

Our purpose today is to see how well the program is running, what improvements can be made in the administration of the program, and whether any modification of the original legislation may now be necessary.

Our first witness this morning is Deputy Assistant Secretary John Fritz. Welcome back to the committee, Mr. Secretary. We will be glad to hear from you.

STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS (OPERATIONS), BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY TED KRENZKE, DIRECTOR OF INDIAN SERVICES, BIA; AND RAY BUTLER, CHIEF, DIVISION OF SOCIAL SERVICES, BIA

Mr. **Fritz**. Thank you very much, Mr. Chairman. With me today is Mr. Ted Krenzke, Director of Indian Services for the Bureau of Indian Affairs, and Mr. Ray Butler, the Chief of the Division of Social Services.

Senator **Andrews**. Let me assure you, Mr. Secretary, that as usual your remarks will appear as though given every word in the record. You may summarize if you want.

Mr. **Fritz**. I would like to summarize my remarks in a very brief fashion. We have worked hard to implement the act. There have been a number of positive things which have grown out of Congress' intent. We recognize that the ideals that have been expressed in this act—that is, the protection of the children, the protection of the on-going tradition and cultures of the tribes and the families—are a critical part of the overall rationale for Congress' enactment of this legislation in 1978.

We think that, as an organization, we have had some very positive experiences, and we have had some less positive in terms of administration and in terms of funding, but I think that, overall, the position of the Department and the Bureau is that we will, to the best of our abilities, strive to carry out Congress' intent and desire for a sensible jurisdictional, as well as a care or custody program for the children who are affected by this act. Frankly, we look forward to continued good relations with this committee and with the Congress as a whole in evolving the act so that it truly meets the intent that you put into the law, and we look forward to the continued positive working relations we have had with the respective tribes, States, families, and other governmental entities and operations charged with the implementation of the act.

That really concludes my synopsis, sir. We will be pleased to answer any questions you might have.

Senator **Andrews**. Thank you very much, Mr. Secretary. The BIA budget reflects two programs for Indian children: the Child Welfare Assistance Program and the Grant Program under the Indian Child Welfare Act. What is the difference in these two programs. Are they comparable to any programs administered by the Department of Health and Human Services?

Mr. **Fritz**. Let me answer the first part of your question, and then I will throw it over here to Mr. Butler for a response on the technical part. The assistance program is one of support for the children, where the grants are focused upon the support services, that is, upon the organizations and the ancillary-support mechanisms. Maybe Ray would care to expand upon my answer.

Mr. **Butler**. Mr. Chairman, the child-welfare assistance section of the Bureau's budget is to provide for the cost of care for the children that are in foster homes or for the children that are in residential treatment centers, whereas the Indian Child Welfare Act Grant Funding Program, under authorization of title II of the act, is for the service portion of the program which provides the tribes and the Indian organizations with the funding to offer services to those children and their Indian families.

Senator **ANDREWS**. Does it provide the funding for general social services?

Mr. **BUTLER**. Yes, sir.

Senator **ANDREWS**. Is it somewhat similar to the programs under the Social Security Act, providing funds to States?

Mr. **BUTLER**. Yes, sir, very similar.

Senator **ANDREWS**. Only in this case, it provides it to the tribes. Is that correct?

Mr. **BUTLER**. To the tribes and the Indian organizations. It is very similar, Mr. Chairman, to what was formerly the IV–A AFDC foster-care program, which is now title IV–E of the Social Security Act, and the Indian Child Welfare Act grant funding, comparable to the title IV–B program of child-welfare services to the States through the Federal Government.

Senator **ANDREWS**. There had been some questions about it, and we wanted to make a complete record and get that on the record and show how it is indeed and in fact comparable to the program under the social security system setup.

For the past 4 years, the administration has not requested any funding for off-reservation programs. All available reports have indicated that the off-reservation programs are successful and have played an important part in keeping Indian children with their families, securing good foster placements, or having the child referred to tribal courts. Do you have any information to indicate to the contrary?

Mr. **FRITZ**. Mr. Chairman, no, I do not. I recall the discussion that we had before you and with you, both in this committee and during the appropriations process, regarding the funding of off-reservation programs. It has been one of the more vexing problems that has faced us as an organization and we who represent the administration are faced with a problem of not having an adequate historical relationship with nonreservation groups, as well as not having a service organization to deal with these off-reservation organizations. So, what we have attempted to do over the past several years is to put the money into the programs which are more clearly related to our overall mission as we have understood it, both from historical and practical points of view.

We recognize that Congress' intent was to fund both on-reservation as well as off-reservation programs. It has just been very difficult for us to get this activity on stream in a fashion that you would desire.

Senator **ANDREWS**. Your prepared statement, Mr. Secretary, justifies the proposal to zero fund the off-reservation programs on the grounds that: "they can conceivably receive funding from all other sources." That is the end of your quote. There were no such funds available when this act was enacted. Have you conducted any studies to determine the availability of such alternative funds now? Have there been some new programs coming into existence out there of which we are not aware?

Mr. **FRITZ**. One of the things which has occurred, Mr. Chairman, is that some of these off-reservation organizations can now receive funds from United Fund and Community Chest, those types of organization.

Senator ANDREWS. But no Government program funds?

Mr. FRITZ. Title 20 moneys, I guess, would be available to these organizations, which the on-reservation groups would not have. But it is not really a systematic approach, in terms of getting the funds there on a regular basis.

Senator ANDREWS. The role of tribal courts is clearly important in the implementation of this act. However, the budget for tribal courts has remained relatively static since enactment of the act. Have you conducted any studies, either through the Social Services Division or the Tribal Government Services Division to determine the needs of tribal courts in the administration of this act?

Mr. KRENZKE. Mr. Chairman, yes. The Bureau of Indian Affairs has had some studies that have looked at the needs of tribal courts around the country, working with the National American Indian Court Judges Association.

Senator ANDREWS. Since this act was passed?

Mr. KRENZKE. Since this act was passed, yes.

Senator ANDREWS. Can we be provided a copy of the study?

Mr. KRENZKE. We would be pleased to provide that for the record.

[Subsequent to the hearing the following publication was submitted for the record: "Indian Courts and the Future," report of the National American Indian Court Judges Association long-range planning project, Judge Orville N. Olney, project director, David H. Getches, project planner/coordinator, 1978. The report, which was prepared under Bureau of Indian Affairs contract No. K51C14201023, was printed by the U.S. Government Printing Office, Washington, DC, stock No. 024-002-00065-9 and is retained in committee files.]

Senator ANDREWS. Some tribes have had difficulty obtaining funding for foster-care placements made by their tribal courts. What is the Bureau policy with regard to payment of foster-care support?

Mr. BUTLER. Mr. Chairman, the child-welfare assistance part of the Bureau's budget does provide for the payment of foster care, or institutional care, where you have a tribal court custody order. It does so in those States where the State welfare departments generally do not provide that type of funding. There have been instances, since enactment of the Indian Child Welfare Act, where certain tribes have petitioned to reassume exclusive jurisdiction over child-custody proceedings, where some States have resisted the payment of foster care. In the States of Michigan, Wisconsin, and, for a short time, in Florida, the respective State welfare departments questioned the authority of tribal court orders in providing for those foster-care payments.

Senator ANDREWS. Is this Bureau policy applicable in all the States or in only some?

Mr. BUTLER. It is not applicable in all States, sir. It is a supplementary program to the AFDC foster-care program. The States in which the Bureau provides assistance, are those with significant Indian populations such as Arizona, New Mexico, Nevada, the Dakotas, Idaho, and Minnesota for Red Lake only. However, in a lot of other States, the State welfare departments are willing and have been able to pay for the foster care of Indian children.

Senator ANDREWS. In fiscal year 1984, Congress reduced the funding of the Indian Child Welfare Act grant program from $9.7 million to $8.7 million. The Select Committee on Indian Affairs recommended, as I recall, funding at $12 million. The funding level for the various grants appears to have been at a barebones level all along. From the BIA's perspective, how has this funding reduction affected the program operations? Have you decreased the number of the programs funded, or did you simply reduce the level of the funding provided the grantees?

Mr. FRITZ. Both were affected. We reduced the number as well as the level of funding. So it has had a deleterious effect on the organization serving the Indian children.

Senator ANDREWS. You did not request any increase for the on-reservation program?

Mr. FRITZ. We were trying to hold the line there. The various competing interests of our budget process really forced our hand into keeping that at a level, but it has had an impact.

Senator ANDREWS. But it stayed at a relatively constant level, as I recall it. No, it did not. It went down $1 million. So, in effect, you made the decision to cut out the off-reservation funding in order to give you the ability to stay constant on the on-reservation?

Mr. KRENZKE. Mr. Chairman, that is essentially correct. The administration's request was to drop the off-reservation funding and to keep the on-reservation funding at a continuing level. What happened, however, as a result of the action of the Congress is that there was a net reduction of $1 million from the previous year, but we continued to fund both the on-reservation and the off-reservation programs. So as Mr. Fritz indicated previously, the result of it was that there has been a cutback, both in some of the numbers of grants and in the sizes of some of the grants, both to on-reservation and to off-reservation programs.

Senator ANDREWS. A number of tribes have complained about the competitive grant process. The BIA regulations provide for achievement of a minimum score for consideration of a grant but do not establish either a minimum funding level or criteria for funding. Could you explain how the grant process works and what factors you consider in awarding funding?

Mr. BUTLER. Yes, Mr. Chairman. The Bureau's position is that the grants are funded on a basis of merit and need. We have guidelines that have been published in the Federal Register, wherein for a service area population of 3,000 or less, there is a maximum grant of $50,000; for a population greater than 3,000 but less than 15,000, we have a $150,000 maximum grant; and for those with a service population of 15,000 or more, a maximum $300,000 grant.

In the funding process, for example, if you have a program that is proposed by an Indian tribe or an Indian organization that supports a service population of 1,200, which is under the 3,000 limit, the merit and need of that proposal will determine the funding level. A service population of 12,000, of course, would result in an estimated lesser grant than the maximum $50,000 that is authorized under the guidelines.

Senator Andrews. Mr. Secretary, we have some questions submitted by Senator Gorton that we will submit to you for answers in the record. We may well have some questions from Senator Melcher and some of the other members of the committee. We appreciate your coming today and we appreciate your usual candor in helping us make a complete record.

Mr. Fritz. Thank you, Mr. Chairman.

[The prepared statement follows:]

PREPARED STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS (OPERATIONS), BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Committee, I am pleased to appear before you today, on behalf of the Department of the Interior, in order to discuss the implementation of the Indian Child Welfare Act, enacted into law on November 8, 1978, as well as to reiterate our experiences with the Act during the intervening years. As you are aware, the Act was predicated on the concept of protecting the interests of Indian children, through promotion of security and stability of Indian families and their governments by the establishment of minimum Federal standards for removal of Indian children from their families and their subsequent placement in foster or adoptive homes. These standards were to reflect the unique cultural values of the community from whence the child came. And finally, tribal governments were to be provided assistance in the operation of family and child service programs.

This Act embodied the highest ideal of American Indians and Alaskan Natives within its structure, that is the protection and nurturing of Indian children within familiar cultural and societal surroundings essential to transmit the ongoing values of the tribes and the families which make them up. The law was designed in such a way that we, the mortals who work within the Executive Branch, could and, in fact, have put them into effect.

From our experiences over the past five years, I think it is safe to say that the Act is working, maybe not without some hitches, maybe not without some false starts, maybe not without some desired changes on the part of the families and communities we serve—but it is working as can be seen by some obvious, positive results. We felt that Congress, the tribes, and most importantly, Indian families, wanted more than simple movement on the part of the Bureaucracy. We felt that Congress and Indian people wanted to commence the fixing, or at least the amelioration, of longstanding problems which have followed the communities and families for some time. In some instances, the solutions have been painful, in others we are still getting started, but in all we have begun to sort through the issues and have commenced focus on the problem solving aspect of the law.

We are pleased to advise the Committee that we have seen a decline in our Child Welfare Assistance caseload of foster care and residential care of children, a reduction of some 300 children this past year, and that trend is continuing into the current fiscal year. We attribute this decline to the effectiveness of the Indian Child and Family Services grant programs in preventing Indian family break-up, and rehabilitation efforts to maintain Indian family life.

Additionally, tribes have utilized the provision found in Section 109 of Title I of the Act which authorizes tribes and states to enter mutually acceptable agreements in providing child welfare services for Indian children. Such agreements minimize the duplication of service which could diminish the limited resources of both the tribe and state in the provision of services. To date, 19 tribes have negotiated agreements with their respective states, an effort which has involved 12 states. One landmark "agreement" involved the joint efforts of all the tribal representatives in Oklahoma which resulted in the state legislature enacted on April 6, 1982, the "Oklahoma Indian Child Welfare Act." Further work is being encouraged in this critical area of tribal/state relations in order to address not only resources utilization, but also critical jurisdictional issues.

Also, I am pleased to advise the Committee that we have reinitiated efforts to consummate an inter-departmental agreement with the Department of Health and Human Services, as authorized by Section 203 of Title II of the Act. In January 1984, we detailed a staff member from the Bureau to the Administration for Native Americans to work full-time in developing such an agreement, and Assistant Secretary Dorcas Hardy personally joined this effort on February 22, 1984. We are convinced this will be a significant effort in attempting to program resources of the two Departments to meet the divergent needs to both on-reservation and off-reservation

Indian families and groups, and to increase the awareness and ultimately the resources of the state child welfare services programs through the Federal/State relationship of the Department of Health and Human Services.

These successes are tempered by lingering issues, some procedural, others substantive. These include concerns surrounding the Department's analysis and interpretation of Child Custody Proceedings found in Title I of the Act. The Department published, "Guidelines for State Courts: Indian Child Custody Proceedings," on November 29, 1979. Although we have no solid data base, empirical experience, based upon the number of notices received and inquiries for Indian status identification, indicates that states are becoming increasingly cognizant of the requirements of the Act as set forth in our guidelines.

Recently, a thoughtful report prepared by Attorney Susan Work Haney on behalf of the Oklahoma Indian Legal Services reported that state courts have begun to gradually define the statutory interpretation of the Act. The courts have focused primarily upon issues involving constitutionality of the Act, applicability of the Act, burden of proof in termination proceedings, qualifications of expert witnesses, the definition of Indian Custodian, application of placement preferences, and the meaning of "good cause" not to transfer a child custody case from state to tribal court. Other issues raised concern appointment of Counsel for Indian parents and full faith and credit for tribal court proceedings.

The interpretive issues are of a critical nature and merit continued observation from the Congress, the Administration and other commentators as the Act continues to evolve. A bright spot in this realm however, is that pursuant to Section 108 of Title I, we have had ten (10) tribes petition to reassume jurisdiction over Child Custody Proceedings, nine (9) of which have been approved and one (1) is undergoing legal review.

A more vexing problem has been that of administering the Indian Child and Family Programs under Title II of the Act. The Administration has consistently supported grants to on-reservation organizations based on merit and need. The Appropriation Committees have agreed with this approach. Obviously, we think that the position of funding cases based on merit and need is essential and necessary since we have followed such a guideline since the inception of the Federal Register announcements. Although during the past several years, many Indian tribes and other organizations receiving resources pursuant to Title II would have the Department seek additional funds in order to fully fund grant proposals which have met the approval criteria, that truly is unachievable in this age of Federal Budget constraints.

It can be argued that every program funded by Federal dollars could use more fiscal support, but almost all fail to receive the money desired. This occurs, of necessity, because the Federal government, like a family, must live within an established budget. Therefore, the Department has sought a workable, prudent budget for these grants and it has further sought to make the delivery system more efficient and less burdensome in order to get more dollars through the system and into the hands of service organizations and tribes. Because of these budget constraints, we hve proposed to discontinue the funding of off-reservation organizations as we consider our primary responsibility to be to Indian tribes. However, this proposal has put the Bureau at odds with the Congress which has seen fit to restore the funds for the off-reservation programs. Nevertheless, it is essential to keep in mind what that proposal focused on: simply, to fund tribal programs, the principal thrust of Bureau activity, at a fair, reasonable, and prudent level—not to the specific detriment of off-reservation programs since they can conceivably receive funding from alternative sources. This dichotomy between funding and administering programs for the two types of locales must be addressed rationally and openly in order for the respective programs to plan for the future.

However, for the Committee's edification, over the past four (4) years, 1980–1983 (the FY 1984 grant application process is not yet completed with some 40 appeals remaining to be adjudicated), we have approved over 600 grants. Indian tribes account for 76.2 percent of the grants and 74.6 percent of the funding, while the off-reservation Indian organizations account for 23.8 percent of the grants and 25.4 percent of the funding; this ratio has remained relatively constant over this period.

Finally, we would like to conclude by stating that the Department's Office of the Inspector General audited the program, reviewing 129 grant programs in four of the Bureau's area offices covering the years 1980, 1981, and 1982. The audit report, issued December 27, 1982, found no disallowed or questionable costs, but offered three program recommendations: (1) Improve the grant review process to assure that need is established as a prerequisite to award; (2) develop a more elaborate monitoring checklist of grant performance; and (3) maintain a listing or data base of other Federal and state funding programs. These recommendations closely paralleled the findings and recommendations of an independent assessment issued September 30, 1981, which was completed under a Bureau contract. That assessment provided an external review and study for potential administrative improvements in the program. As a result of the 1981 analysis and other considerations, we published and promulgated revised regulations on September 10, 1982, to provide improved administration of the program. As a result of these regulatory changes and the lack of significant programmatic problems, the Inspector General's Audit was cleared March 31, 1983, after only three months suggesting a well managed program. On January 11, 1984, further proposed regulatory revisions were published to update the administration of the grant programs. Our previous experience in evaluating grant proposals has been utilized to provide for a 3-year conditional approval thereby removing the annual review and submission obstacle of Indian tribes and Indian organizations which have reapplied yearly.

All of these actions, both the positive and the less positive, simply serve to reiterate the Bureau and the Department's position, that is, Congress' intent and desire for a sensible jurisdictional and care/custody program for Indian children is being carried out. We look forward to continued good relations in the evolution of the Act with affected tribes, states, families, and governmental agencies charged with the Act's implementation.

This concludes my prepared statement, and I will be pleased to respond to any questions the Committee may have.

Senator ANDREWS. Our next witness will be Casimer Wichlacz, Deputy Commissioner of the Administration for Native Americans, Department of HHS. It is good to have you here, Mr. Commissioner. We will be glad to hear your testimony, which you may summarize in any way you wish.

STATEMENT OF CASIMER WICHLACZ, DEPUTY COMMISSIONER, ADMINISTRATION FOR NATIVE AMERICANS, DEPARTMENT OF HEALTH AND HUMAN SERVICES; ACCOMPANIED BY LOUISE ZOKAN-DELOS REYES, SENIOR INDIAN CHILD WELFARE SPECIALIST, BUREAU OF INDIAN AFFAIRS; FRANK FERRO, DEPUTY ASSOCIATE COMMISSIONER, ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, HHS; AND DAVID A. RUST, DIRECTOR, OFFICE OF POLICY AND LEGISLATION, HHS

Mr. WICHLACZ. Thank you, Mr. Chairman, for the opportunity to present an overview of the activities within the Office of Human Development Services that support the Indian Child Welfare Act of 1978. Accompanying me this morning are several colleagues from the Department of Health and Human Services. On my left is David Rust, the Director of the Office of Policy and Legislation; on my right is Mr. Frank Ferro, the Deputy Associate Commissioner for the Administration for Children, Youth and Families; and to his right is Louise Zokan-Delos Reyes, who is on detail to the Administration for Native Americans as a senior Indian welfare specialist from the Bureau of Indian Affairs.

The basic mission of the Office of Human Development Services within the Department of Health and Human Services is to reduce dependency among various populations through programs that foster the optimal development of individuals and families. The provision of services to prevent, reduce and eliminate dependency emphasizes a balance between social and economic development in local communities. Within the framework of promoting self-sufficiency, the Office of Human Development Services addresses the child welfare concerns of American Indian families and children primarily through the Administration for Children, Youth and

Families [ACYF[and the Administration for Native Americans [ANA].

The Administration for Children, Youth and Families supports programs and activities designed to improve the quality of life for children, youth and their families. Primary emphasis is on developing better services for vulnerable child populations and meeting the developmental needs of low-income preschool children. For example, in fiscal year 1983, the Head Start program funded 93 Indian Head Start projects, which served 13,435 Indian children at a funding level of $33,364,319. In fiscal year 1984, the Head Start program will be expanded, and additional Indian children are expected to be served.

The ACYF also administers the Child Welfare Services program authorized under title IV-B of the Social Security Act. This program assists State public welfare agencies in establishing, extending and strengthening child welfare servcies to enable children to remain in their homes under the care of their parents or, where that is not possible, to provide alternate permanent homes for them.

Under section 428 of the Social Security Act, beginning in fiscal year 1983, grants were awarded directly to eligible Indian tribes meeting the child welfare plan requirements of the law. In fiscal year 1983, grants totaling $242,780 were made to 23 Indian tribes in nine States. In fiscal year 1984, we anticipate that additional Indian tribes will be eligible and will apply for funds for fiscal year 1984 and future years.

In addressing Indian child welfare this year, the focus will be on improved implementation of Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980, and the problem of fragmented State and Federal funding. Through this effort, we intend to increase preventive services and permanency planning and improve coordination of child welfare planning and delivery of child welfare services with tribes and States.

The Administration for Native Americans promotes social and economic self-sufficiency for American Indians, Alaskan Natives, and Native Hawaiians through competitively awarded grants. Its social development goal focuses on increasing Indian self-determination in delivering social services and is interrelated with its other goals of economic development and governance. In regard to governance, the primary role of Indian tribal governments and their cultural and social standards in child custody and placement proceedings is recognized as being instrumental in preventing the break-up of Indian families.

The Administration for Native Americans' strategy for addressing Indian child welfare concerns includes social and economic development grants; replication of innovative techniques and program concepts, referred to as technology transfer efforts; Federal coordination; and advocacy.

The Administration for Native Americans funds social and economic development projects that will make the greatest impact in promoting self-sufficiency. The most recent program announcements for financial assistance for these projects articulate the measures and results expected in the social development area. Examples of the types of outcomes in the area of child welfare include the assumption of control of planning and delivering social services on Indian reservations by Indian tribes and Indian organizations in off-reservation areas; increase in Indian children adopted or placed in permanent homes in compliance with the Indian Child Welfare Act, who would otherwise be in foster-care institutions; increase in Indian children returning to their own homes from foster care; increase in number of developmentally-disabled Indian children served by appropriate agencies, including adoption; and decrease in general-assistance welfare caseload and Aid to Families with Dependent Children caseloads in Indian country.

We believe it is important for all agencies involved in services to cooperate and coordinate. Here are a few examples within the Office of Human Development Services, which represents the cooperation of the Administration for Native Americans and the Administration for Children, Youth and Families.

A project by the American Indian Law Center offers tribes technical assistance in the area of permanency planning, which previously had been targeted only to States. Permanency planning is the determination of each child's future in the best interest of that child. For example, this may involve preventing family break-up, the return of children to their homes, where possible, and the placement of children unable to return to home to a permanent-home arrangement other than an institutional setting. This is not only in the best interest of the children, but it is also cost-effective and reduces dependency.

Another project, the National American Indian Court Judges Association, is assisting in the tribal development of locally-determined and culturally-specific approaches to enhancing parenting skills. These services are designed to assist tribes in strengthening family life and preventing the break up of families. The project includes the Ponca Tribe of Oklahoma, the Eastern Band of Cherokee, Zuni Pueblo in New Mexico, and the Fort Belknap Tribe in Montana.

The Blackfeet Community College is conducting another project designed to prevent fetal alcohol syndrome among Plains Indians. This model is designed to reduce the number of fetal alcohol syndrome affected infants born on the reservation. In addition, it will promote curricula changes in health courses at local colleges and the high school level. The overall result of this project will be to reduce the developmental and educational problems stemming from this severe defect.

The Office of Human Development Services also plays a role in policy development, advocacy for Indian families, implementation and modification of statutes or regulations which provide incentives for strengthening tribal governments. Fiscal incentives, such as title IV-B of the Social Security Act, enable tribes to take direct responsibility for providing social services. In addition, the joint planning process under this program is perhaps the most significant component of the program. The joint planning process links the Department and the Indian tribes on a government-to-government basis in the technical development and improvement of child welfare services.

Another advocacy effort of the Department is the development of legislation for title XX direct funding to Indian tribes, submitted to

Congress on April 27, 1983. Direct funding under the title XX social services block grant will provide tribes a basis for ongoing funds, in addition to discretionary moneys. Direct funding under the social services block grant is also expected to be a major resource for Indian tribes to support their own child welfare services. Although not yet acted on by the Congress, this amendment will continue to be pursued by the Department.

The Office of Human Development Services also coordinates with other Federal agencies to improve Indian child welfare services. Support has been provided to enhance the relationship between tribes and States through cooperative efforts with the Bureau of Indian Affairs, the Administration for Native Americans, and the Commission on State-Tribal Relations. The Commission works to improve State and tribal intergovernmental relations through identification of productive elements in State-tribal relationships and to develop a framework for new ones.

The Commission grew out of work done by the National Conference of State Legislatures, the National Congress of American Indians, the National Tribal Chairmen's Association, and the American Indian Law Center. Experience suggests that this cooperation leads to significant results. For example, the Sisseton-Wahpeton Tribe has entered into a cooperative child welfare agreement with the State of South Dakota. Through this cooperative effort, the child welfare case load has declined by 56 percent since 1981.

At the Federal level, the senior Indian child welfare specialist from the Bureau of Indian Affairs, who is accompanying me this morning, is currently working with the Office of Human Development Services to assist in designing a coherent and comprehensive plan for Indian child welfare services for both agencies. This initiative will coordinate the resources and activities of the Administration for Native Americans, the Administration for Children, Youth and Families, and the Bureau of Indian Affairs. This effort will be results-oriented and will establish a framework for measuring change and progress.

In summary, the Office of Human Development Services' approach to improving Indian child welfare services involves coordinating Federal efforts and supporting Indian tribes in implementing those services that best meet their needs. Included in this effort is our support for State and tribal agreements which facilitate the delivery of tribal child welfare services. This approach, we believe, can best address the problems which result in the break up of Indian families and can best protect the interests of Indian children and promote the stability and security of Indian tribes and families.

I appreciate this opportunity to appear before the committee. I will be happy to answer any questions you may have at this time.

Senator ANDREWS. Thank you, Mr. Commissioner. The December 1982 inspector general's report from the Department of the Interior indicated that your department had conducted a 3-year study, entitled "Indian Family Support Project." Can you supply this committee with a copy of that study?

Mr. WICHLACZ. Mr. Chairman, I am not specifically familiar with that study. I will look into it, and I will be happy to provide it to the committee.

Senator ANDREWS. But you are sure where it is in the archives, and you can find it and send it on the committee?

Mr. WICHLACZ. This is the first I have heard of it, Mr. Chairman. I will do my very best to provide it to you.

Senator ANDREWS. I think that is great when our committee staff knows more about what you have been doing in your department than you do.

Mr. WICHLACZ. I believe you said it was a Department of the Interior IG report, sir.

Senator ANDREWS. Sure, But any time an IG report concerns the department that I am responsible for, I would make certain I knew where it was and what it says. So if you can pick it up and send it on to us, it will be helpful

Mr. WICHLACZ. Yes, sir.

[Subsequent to the hearing the report was supplied for the record and is retained in committee files.]

Senator ANDREWS. In the 97th Congress, legislation was enacted to provide funding of some programs to Indian tribes through a block grant process. Have you developed any information on the extent to which the tribes have been able to utilize funds for child welfare through these programs; and if so, what have you found?

Mr. WICHLACZ. The block grants that Indian tribes are eligible for, which include the low-income energy assistance program and the community services block grant, do not have a specific child welfare focus. I do not know that we have any specific information on any child welfare-related activities conducted under these block grants.

Senator ANDREWS. In other words, to the best of your knowledge, there are no block grant programs available to the tribes having to do with child welfare?

Mr. WICHLACZ. At this time, that is correct, Mr. Chairman. As I mentioned, we have proposed direct funding under the Social Services Block Grant——

Senator ANDREWS. But there are none available at this time?

Mr. WICHLACZ. Not as a block grant, sir.

Senator ANDREWS. Thank you. Your statement indicates that less than $250,000 was received by tribes under section 428 of the Social Security Act. How are these funds allocated to the tribes? Is it on a formula basis?

Mr. WICHLACZ. Yes, the allocation is on a formula basis, based on population and weighted on a poverty factor. For Indian tribes, we use the maximum poverty factor allowable under the statute for States or territories on the assumption that most reservations represent a population that is generally poor.

Senator ANDREWS. Of the actual amount of $242,000, how much money was allocated to the Navajo Tribe?

Mr. FERRO. Approximately $160,000 was allocated to the Navajo Tribe.

Senator ANDREWS. $160,000 out of $242,000?

Mr. FERRO. In the three States where they reside.

Senator ANDREWS. Then you had about $90,000 to allocate to the other 22 tribes?

Mr. FERRO. Yes.

Senator ANDREWS. How do you justify that?

Mr. **Ferro**. It was based upon the formula utilized. The formula utilized to determine allotments to the eligible Indian tribes is the same that is used to make allocations to the States: that is, population under age 21 and poverty. That was the determination that was made in the proposed regulation, published in the Federal Register, and the final rules that were published on May 23, 1983.

Senator **Andrews**. With respect to the study ANA is undertaking, what is your plan of operations, and what is your time frame for completing the study?

Mr. **Wichlacz**. I believe the study referred to, Mr. Chairman, is the agreement we have with the Bureau of Indian Affairs to have the senior child welfare specialist working on detail with our department. This is anticipated to be a 1-year detail, and we are working currently at the staff level with the Department of the Interior, the Bureau of Indian Affairs, and within the Office of Human Development Services to develop an action plan that involves several components. One of the components will be to identify those projects, activities, and findings from research, demonstration and evaluation efforts that would be of some use and interest to Indian tribes and Indian organizations in this area and to ensure the maximum availability of that to those to whom it might be helpful. That is one aspect of it.

The other aspect is coordinating our funding and our program development activities. As we look forward to our program announcements and our current funding activities in fiscal year 1984 and anticipating our plans for 1985, we saw this would be an opportunity for us to do greater coordination of our respective resources and program interests, where they and we have an overlapping interest.

The third effort is a very assertive effort to implement the section 428 of the Social Security Act, with direct funding of title IV-B, which I mentioned. Probably more effective than the money, perhaps, is the joint planning effort that this involves in our department with the Indian tribes. We think that this link to the tribes on a routine basis, having them as part of a network that previously statutes like title IV-B only connected the States to, will have a very significant impact in improving services to Indian children and their families.

Senator **Andrews**. When did the detail start?

Mr. **Wichlacz**. It started on January 3, Mr. Chairman, of this year, and we anticipate it going to 1 year from that date.

Senator **Andrews**. So you are not going to complete the study until January of next year?

Mr. **Wichlacz**. I would not characterize it, Mr. Chairman, as a study so much as a process of coordinating our Federal efforts in the area of Indian child welfare services.

Senator **Andrews**. Do you expect to develop any legislative proposals?

Mr. **Wichlacz**. We certainly will be examining legislative and budget issues, Mr. Chairman. At this time, there would be no specific legislative issues that we have on the agenda.

Senator **Andrews**. Unless you develop legislative proposals out of this study, are you not just spinning your wheels?

Mr. Wichlacz. Mr. Chairman, I would like to think that we are doing a very important effort, in terms of coordinating Federal resources that have been allocated in various programs to ensure that they meet the intent of Congress to work together in a mutually-reinforcing way for the impact as intended for the Indian children and families in support of the tribes. I think that there is more that we can do in this area, and I think this has been a great opportunity that has had the support of the highest level of policymakers in the two departments, the two assistant secretaries and throughout the departments, to work in this direction.

I think that is the intent, as described under the Indian Child Welfare Act, of the Department of Health and Human Services and the Bureau of Indian Affairs.

Senator Andrews. Have you made any preliminary determinations with respect to the eligibility of Indian tribes for programs under the Administration for Children, Youth and Families; and if so, what have you found out so far?

Mr. Ferro. If I understand the question, Mr. Chairman, eligible tribes are those tribes which provide child welfare services directly and under contract with the BIA for those services that were provided in the past or would have been provided by the BIA. I hope I have answered your question.

Senator Andrews. I just wanted to find out if you had made any preliminary determinations on this eligibility, and I guess you have not.

Mr. Ferro. Well, we have. In fiscal year 1983, 89 tribes were potentially eligible. In fiscal year 1984 thus far, 97 tribes are potentially eligible, although that number may increase.

Senator Andrews. If you would like to expand on that for the record later on, you certainly may.

Has the Department developed any statistics on rates of placement of Indian children in foster or adoptive settings in comparison to the general population?

Mr. Wichlacz. Yes, Mr. Chairman. We have had some statistics that we have developed based on 1980 data of children in State placement.

Senator Andrews. What have you found out?

Mr. Wichlacz. Our best estimate currently is that the Indian placement rate overall in the Nation is higher than that of the non-Indian rate by a significant degree.

Senator Andrews. I would suspect that, but by what general figure is "a significant degree?"

Mr. Wichlacz. Our best estimate, Mr. Chairman, is about five times the overall rate.

Senator Andrews. That is pretty significant.

Mr. Wichlacz. Yes, sir.

Senator Andrews. Can you provide the details for the record?

Mr. Wichlacz. Yes, Mr. Chairman. We would be happy to do that.

[Subsequent to the hearing the following information was applied for the record:]

ADMINISTRATION FOR NATIVE AMERICANS

OUT OF HOME PLACEMENT RATE, INDIAN CHILDREN COMPARED TO GENERAL POPULATION, 1980

In 1980, American Indian Children were placed out of home at a rate nearly five times greater than that for all children in the United States.

This fact is derived in the following manner from data published by the U.S. Department of Health and Human Services, Office of Civil Rights, 1980 Children and Youth Referral Survey (September, 1981), and the U.S. Census (PC-80-1-C).

	Number	Symbol
Indian children placed by State agencies	5,475	
Indian children placed by BIA	3,300	
Total	8,775	(A)
Total American Indian population (including Eskimos, Aleuts)	1,418,195	(B)
Rate of out of home placement of Indian children to total Indian population (A) ÷ (B) = (C)	[1] 6.18744	(C)
All children placed by State agencies (including Indians)	301,943	(D)
Total U.S. population	226,504,825	(E)
Rate of out of home placement of all children to total population (D) ÷ (E) = (F)	[1] 1.33305	(F)
Comparison of placement rate for Indian children to placement rate for all children in United States (C) ÷ (F) = (G).	4.64-1	(G)

[1] Per 1,000.

Senator ANDREWS. In 1980, Congress enacted the Adoption Assistance and Child Welfare Act. This act included provisions of benefits to Indian tribes on placements through tribal courts. To what extent are Indian tribes or their tribal courts participating under this act?

Mr. FERRO. The act has two parts, Mr. Chairman: title IV-E, which is the Foster Care and Adoption Assistance Maintenance Program, and title IV-B, which is the Child Welfare Services Program. The title IV-E Foster Care and Adoption Assistance Program replaced the title IV-A Foster Care Program, which did not have an adoption assistance provision in it. Up until Public Law 96-272, there was no Federal fiscal participation in adoption assistance.

Those funds are available only to States under the title IV-E authority, and the States are defined as the 50 States and the District of Columbia. Therefore, tribes are not eligible entities to receive title IV-E foster care or adoption assistance funds. However, tribes can receive those funds under an agreement with the State, and there have been such agreements, I believe—although I would not swear to it at the moment—entered into between States and some tribes. But that is definitely a possibility. It is something that is permissible, both under the statute and the regulations.

Senator ANDREWS. It is permissible, but there is no defined statute that would, in effect, give priority to the tribes where five times the number of these adoptions per unit of population is going on. So it is just if the States wish to give the tribal courts a little extra assistance, they might, you are saying?

Mr. FERRO. Well, it is not just the tribal courts; it is the tribes. Yes, you are correct, sir.

Senator ANDREWS. So there is no clear channel defined?

Mr. FERRO. Absolutely not. That would require a legislative change.

Senator Andrews. Section 203 of the Indian Child Welfare Act specifically provided for agreements between the Secretary of HEW and the Secretary of the Interior in support of Indian child and family services programs. Would that not solve this dividing of the channel, and what efforts have been made by the two Departments to enter into agreement?

Mr. Wichlacz. Mr. Chairman, the agreement that we have is not a formal interagency agreement. Currently, it is working as I described earlier, under a three-pronged approach to improving child welfare services. We have had other agreements on specific projects, such as the one I mentioned with the Commission on State-Tribal Relations, on which we have had coordinated funding in our efforts for specific projects.

Senator Andrews. But this is an act that was passed in 1978. We are talking about 6 years later.

Mr. Wichlacz. There are many activities that we have coordinated on a routine basis with the Bureau of Indian Affairs. At the time the statute was enacted, the Indian Child Welfare Act, for example, there was no provision under title IV–B for Indian tribes to receive direct funding. Congress, under Public Law 96–272, made it permissive, and our department made it a routine process by policy and regulations and enacted direct funding.

Senator Andrews. You are correct: Congress made it permissive, but we did provide for these agreements between HEW and the Secretary of the Interior because Congress perceived some 6 years ago the challenge that we had in those fields. Now, are there any legal barriers to such agreements?

Mr. Wichlacz. Mr. Chairman, I know of no legal barrier. I think we have the authority within the Indian Child Welfare Act, as well as other statutes that are supportive and permissive of interagency cooperation and agreement.

Senator Andrews. Thank you, Mr. Commissioner.

[Subsequent to the hearing the following material was received for the record. Testimony resumes on p. 51.]

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Human Development Services

Administration for Native Americans
Washington DC 20201

OCT 26 1982

RECEIVED AUG 14 1984

MEMORANDUM TO: Regional Administrators
Regions I-X

THRU: Teresa Hawkes, Director
Office of Program Coordination
and Review

FROM: Commissioner
Administration for Native Americans

SUBJECT: Indian Adoption Issues

Attached for your information is a staff paper prepared by the Administration for Native Americans for the Assistant Secretary for Human Development Services. I thought that it may be of interest to you by way of background for the Indian adoption elements that were included in the HDS FY 1983 proposed Discretionary Funds Plan (Federal Register, September 23, 1982). Also, Indian adoption issues will be specifically considered in the national HDS adoption initiative that is being developed.

I hope that the information in the paper and attachments will be of interest to you. One of the attachments, Attachment B, is being updated by the Commission on Tribal-State Relations. At such time that an updated report on the implementation of the Indian Child Welfare Act by the States is available, I will forward it to you. The survey date mentioned in the paper is from the 1980 national survey conducted by the Office of Civil Rights, Department of Health and Human Services (2 volumes).

Please consider that this is an internal staff paper and it is not intended for external release.

for A. David Lester

Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Human Development Services

Administration for Native Americans
Washington DC 20201

August 10, 1982

MEMORANDUM TO: Dorcas R. Hardy
Assistant Secretary
for Human Development Services

THRU: ES___________

FROM: Commissioner
Administration for Native Americans

SUBJECT: Indian Adoption Issues

This is the additional information that you requested regarding the problems in the area of Indian adoptions.

The exceedingly high incidence of Indian children separated from their families in comparison to the population at large has continually surfaced as the critical problem in Indian child welfare matters. ANA analyzed the 1980 survey data on child placements with respect to Indian and non-Indian placement rates by State. The Indian Child placement rate by State is provided in Attachment A. The States are ranked from highest to lowest ratio of Indian to non-Indian placements. For example, South Dakota is top on the list with an Indian placement rate that is 27 (rounded to the next whole number) times that of the non-Indian placement rate. As previously mentioned, these figures are an undercount of the number of Indian children in placements. The data does not include the BIA child welfare caseload and tribal placements. These statistics reflect the States' child welfare system for 1980. There are a significant number of children in this group of Indian children in out-of-home placement that are potential candidates. The 1980 survey data however limited, does provide reliable national data that can be used by HDS for targeting.

The passage of the Indian Child Welfare Act of 1978 (ICWA) Public Law 95-608, was intended to prevent the break up of Indian families. Perhaps the most significant feature of this legislation is the recognition of the primary role of Indian tribal government and Indian cultural and social standards in the proceedings of child custody and placement. ICWA established State standards for the placement of Indian children in foster and adoptive homes. Indian children are to some extent moving from State child welfare systems under ICWA to the custody of the tribes. A problem in this area is that few Indian tribal codes effectively address adoptions. The lack of tribal adoption codes tends to support the continued build up of Indian children in out-of-home placements at the Reservation level. In the absence of any program initiatives, the ICWA may result in simply the transfer of the problem rather than a solution. Attached is a status report (Attachment B) on the implementation of ICWA from the perspective of the States.

Another significant Federal law that can have a positive impact in the area of Indian adoptions is the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. This Act specifically authorizes direct funding to Indian tribes under Title IV-B of the Social Security Act. Indian tribes, however, cannot apply under Title IV-B until final regulations for P.L. 96-272 are published.

To address the problems in the area of Indian adoptions, ANA recommends the utilization of the FY'83 discretionary funds process to include the following:

1. A national effort to assist Indian tribes in the development and implementation of Indian tribal codes on adoption. This effort is expected to reduce the numbers of Indian children in foster homes and other out-of-home placements by facilitating the adoption of Indian children through tribal courts.

2. Challenge grants to those Indian tribes operating their own child welfare services to reduce the number of Indian children inappropriately in placement. This includes the application of permanency planning, case reviews and comprehensive emergency services techniques. This is consistent with the HHS policy articulated in the NPRM to implement P.L. 96-272. The eligible tribes for these

challenge grants should be the same that will become available under Title IV-B when final rules are issued.

3. Challenge grants to States for the implementation of Title I of ICWA. The development of cooperative processes between States and Indian tribes for the disposition and management of child custody, jurisdiction and service matters should be the focus of this effort. A positive working relationship between States and Indian tribes is needed to protect the best interests of Indian children.

Caution must be taken to the sensitive nature inherent in the return of Indian children to their tribes by the States in support of Title I of ICWA. It is important to avoid putting pressures on States to "dump" children on tribes who lack the structures and resources to handle these child welfare matters. Financial reasons alone, in a period of budget constraints have the potential of providing institutional incentives for blindly reducing the Indian child welfare caseload in State agencies pursuant to Title I. "Dumping" children in fact would only serve to transfer the problem rather than to offer a solution.

I look forward to discussing this with you at your convenience.

for A. David Lester

Attachments

ATTACHMENT "A"

ADMINISTRATION FOR NATIVE AMERICANS
COMPARISON OF PLACEMENTS OF INDIAN VS. NON-INDIAN CHILDREN BY STATE (1980)

	Indian Placements Per 1000 Population	Non-Indian Placements Per 1000 Population	Rate of Indian Placement Compared to Non-Indian Placements*
South Dakota	11.20	0.42	26.67
North Dakota	7.14	0.55	12.98
Minnesota	20.21	1.68	12.03
Utah	9.50	0.81	11.73
Nebraska	16.96	1.61	10.53
Alaska	8.37	0.88	9.51
South Carolina	10.07	1.10	9.15
Maine	14.92	1.75	8.53
Arizona	1.20	0.77	8.31
Iowa	7.88	0.97	8.12
Wyoming	5.47	0.79	6.92
Washington	6.66	1.06	6.28
Wisconsin	8.24	1.32	6.24
Montana	5.10	0.85	6.00
Massachusetts	7.36	1.67	4.41
Idaho	3.52	0.84	4.19
Illinois	4.12	1.00	4.12
Oregon	7.40	1.94	3.81
Mississippi	3.40	0.94	3.62
Colorado	4.65	1.44	3.23
North Carolina	3.68	1.43	2.57
Michigan	2.97	1.16	2.56
Oklahoma	1.52	0.63	2.41
Hawaii	1.44	0.61	2.36
Vermont	3.05	1.50	2.03
California	2.22	1.15	1.93
New Hampshire	2.22	1.43	1.55
Connecticut	1.98	1.32	1.50
Kansas	2.47	1.69	1.46
New Mexico	1.29	0.95	1.36
Texas	0.65	0.48	1.35
Indiana	2.42	1.89	1.28
Florida	1.19	1.02	1.17
New York	2.66	2.32	1.15
Maryland	1.99	1.77	1.12
Ohio	1.80	1.64	1.10
Arkansas	0.64	0.59	1.08
Alabama	1.45	1.37	1.06

	Indian Placements Per 1000 Population	Non-Indian Placements Per 1000 Population	Rate of Indian Placement Compared to Non-Indian Placements*
Missouri	1.46	1.52	0.96
Nevada	1.13	1.21	0.93
Georgia	0.92	1.09	0.84
Pennsylvania	0.95	1.24	0.77
Louisiana	0.75	1.25	0.60
Virginia	0.75	1.58	0.47
West Virginia	0.62	1.36	0.46
New Jersey	0.36	1.40	0.26
Tennessee	0.20	0.94	0.21
Kentucky	0	1.34	--
Rhode Island	0	1.73	--
Delaware	0	1.78	--

*For example in South Dakota, the rate of Indian placements is about 27 times greater than non-Indian placements.

1980 Population Totals for American Indians, Eskimos, and Aleuts

RANK	STATE	TOTAL
1	California	201,311
2	Oklahoma	169,464
3	Arizona	152,857
4	New Mexico	104,777
5	North Carolina	64,635
6	Alaska	64,047
7	Washington	60,771
8	South Dakota	45,101
9	Texas	40,074
10	Michigan	40,038
11	New York	38,732
12	Montana	37,270
13	Minnesota	35,026
14	Wisconsin	29,497
15	Oregon	27,309
16	North Dakota	20,157
17	Florida	19,316
18	Utah	19,256
19	Colorado	18,059
20	Illinois	16,271
21	Kansas	15,371
22	Nevada	13,304
23	Missouri	12,319
24	Ohio	12,240
25	Louisiana	12,064
26	Idaho	10,521
27	Pennsylvania	9,459
28	Arkansas	9,411
29	Virginia	9,336
30	Nebraska	9,197
31	New Jersey	8,394
32	Maryland	8,021
33	Indiana	7,835
34	Massachusetts	7,743
35	Georgia	7,619
36	Alabama	7,561
37	Wyoming	7,125
38	Mississippi	6,180
39	South Carolina	5,758
40	Iowa	5,453
41	Tennessee	5,103
42	Connecticut	4,533
43	Maine	4,087
44	Kentucky	3,610
45	Rhode Island	2,898
46	Hawaii	2,778
47	West Virginia	1,610
48	New Hampshire	1,352
49	Delaware	1,330
50	District of Columbia	1,031
51	Vermont	984

ATTACHMENT "B"

STATE IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT*

1. ALABAMA

The State has not implemented ICWA.

2. ALASKA

Within the State of Alaska, there are over 200 villages and other native groups that are federally recognized, while there are over 280 federally recognized tribal groups in the lower 48. Immediately following enactment of ICWA, the Division of Family and Youth Services adopted an ICWA section in their program manual. An updated revision of this program manual is scheduled for publication this fall. The State Courts have not adopted rules on ICWA but the State plans to revise the children's court rules and it is anticipated that ICWA will be included. A tribal-state agreement is currently in the beginning stages of negotiations between the North Pacific Rim Native Association and the Alaska Department of Health and Social Services.

3. ARIZONA

Implementation of ICWA has been a joint process between the twenty (20) tribes and the Arizona Department of Economic Security (ADES), including: extensive training sessions with tribal, Bureau of Indian Affairs (BIA) and ADES staff; individual meetings with each Arizona tribe; identification of all Indian children in the state foster care system; publication of an "Indian Child Welfare Resource Directory" (which includes the names of all Arizona tribes, ADES Local Offices, Tribal and State Court Judges, written referral and notification procedures for the state and tribe, copies of model petitions for transfer of jurisdiction, etc.); and, development of tribal-state (Inter-Governmental) agreements on ICWA. See A.R.S. § 11-952, Inter-governmental Agreements and Contracts, for Arizona's statutory requirements for Inter-Governmental Agreements (IGAs). Arizona state law requires that children may only be placed in "licensed or approved" foster homes or institutions (when state allocated funds are used for foster care payments); therefore, an ICWA IGA could only be developed with those tribes that have developed foster home licensing/approval standards. At the present time, three reservations have developed such standards: Gila River Indian Community, Salt River Indian Community, and Fort McDowell. Salt River has presented a negotiated ICWA IGA to the tribal council for approval, and Gila River and Fort McDowell are in the process of doing so. It is anticipated that these agreements will be signed by October, 1981.

---

*Abstract of information collected by Commission on Tribal-State Relations of the Association of State Legislators and includes information through September 1981.

ADES has also rewritten internal agency operating procedures to specifically delineate responsibilities of workers in regard to Indian children served by the Department. ADES is in the process of developing a videotape presentation entitled: "The 1978 Indian Child Welfare Act: Arizona's Perspective" for use in training staff about ICWA and for public relations purposes. At this time, there are no plans to issue state court rules on ICWA.

4. ARKANSAS

No ICWA agreement is in effect in Arkansas. ICWA administrative procedures and policy have been developed and implemented for foster care and adoption by the Division of Social Services, Department of Human Services.

5. CALIFORNIA

An ICWA agreement will probably be considered as soon as a tribe (or consortium of tribes) reassumes exclusive jurisdiction under ICWA (California is a P.L. 83-280 state). Administrative procedures have been adopted for adoption and foster care ICWA cases in two separate publications. The state does not plan to draft ICWA court rules.

6. COLORADO

In July, 1981, the State executed ICWA agreements with the Ute Mountain Tribe and the Southern Ute Tribe. Court rules on ICWA have not been issued, nor are there plans to issue such rules in the near future. The Department of Social Services is in favor of promoting adoption of special regulations for foster care pre-adoptive placement of Indian children, and plans to seek promulgation of these rules as soon as possible.

7. CONNECTICUT

There are only state-recognized tribes in Connecticut, no federally recognized; therefore, there are no plans to issue court rules or social service procedures.

8. DELAWARE

There are no federally recognized tribes in Delaware. The Nanticoke Indian Tribe was officially recognized by Delaware in 1922. The Tribe has had no problem in resolving related issues within the Nanticoke community and has no plans for implementing ICWA through an agreement with the state.

9. FLORIDA

The State of Florida and the Seminole Tribe finalized an interim ICWA agreement in March, 1980. The agreement outlines their resolution to identified problems, i.e., jurisdiction, foster care licensing and payment of foster care. Neither the State Courts nor State Health and Rehabilitative Services have issued rules on ICWA.

10. GEORGIA

There are no federally recognized tribes in Georgia; therefore, the state has not entered into an ICWA agreement with a tribe. No social service procedures on ICWA have been issued.

11. HAWAII

There are no federally recognized tribes in Hawaii and the Indian population is not large enough to warrant enactment of special ICWA court rules or special social service procedures. There are no plans to adopt any special rules or procedures on ICWA.

12. IDAHO

In 1977, a pre-ICWA agreement was executed by the Department of Health and Welfare, Region VI, and the Shoshone-Bannock Tribes of the Fort Hall Reservation. This agreement established procedures for handling child protection cases, as well as recognized the need for cooperation and coordination and the need to preserve the integrity of the Tribes' culture. The agreement was negotiated as a result of the volume of Indian children involved in Child Welfare services in Region VI. ICWA agreements with other tribes in Idaho have not been negotiated but there have been continuous work efforts between the Department of Health and Welfare staff, Tribal Social Services and Bureau of Indian Affairs officials. The Department of Health and Welfare is in the process of drafting a social services policies and procedures manual to be promulgated through the Administrative Procedures Act. These procedures will serve as a formal guide in implementing the intent of ICWA. The Tribal Court Administrator of the Shoshone-Bannock Tribes of the Fort Hall Reservation developed an ICWA reference manual for participants in a March, 1981, statewide conference.

13. ILLINOIS

There are no federally recognized tribes in Illinois but there is an Indian population of some 18,000, centered in Chicago. The Department of Children and Family Services has issued regulations to be followed in ICWA cases.

14. INDIANA

There are no federally recognized tribes within Indiana's geographical boundaries. The Department of Public Welfare, Division of Child Welfare/Social Services has provided information on ICWA to 92 county welfare departments and private licensed child welfare agencies. Additional information regarding the ICWA is being included in the Child Welfare/Social Services manual to be issued in early 1982. There are no plans for adoption of court rules.

15. IOWA

There is one (1) federally recognized tribe, Sac & Fox of the Mississippi, in Iowa and the Indian population is a small percentage of the total population. There are no plans for a tribal-state agreement on ICWA. The Department of Social Services adopted a policy and procedures for ICWA in a chapter of the 1980 Employee's Manual. The problems encountered in implementation of ICWA includes: payment of foster care board in transfer cases; response from tribes after notice on cases, miscommunication (between the tribe and state) in placement orders; and determination of membership of eligibility of membership of Indian children.

16. KANSAS

The Department of Social and Rehabilitative Services is adopting written procedures for implementation of ICWA, which support the efforts of a consortium formed by the four federally recognized tribes in Kansas to develop a child welfare system. The Kansas Legislature will be considering a proposed major revision of the Kansas Juvenile Code, which refers to ICWA.

17. KENTUCKY

There are no federally recognized tribes in Kentucky, and the occasion for families of federally recognized tribes to be before the State Court would be extremely rare; there is no plan for issuing rules for state courts. The Department of Human Resources would handle any rare situation involving ICWA on a case by case basis.

18. LOUISIANA

The state has not executed an ICWA agreement with any tribe but plans have been made to meet in the near future to discuss ICWA and to determine the need for such agreements.

19. MAINE

There are three (3) federally recognized tribes in Maine and negotiations on an ICWA agreement are in the initial stages with the Penobscot Tribe. The Department of Human Services is currently following an informal ICWA policy on ICWA cases but a formal policy will be issued in late fall. During their orientation, social workers are provided with relevant information on ICWA. There are currently no plans to enact court rules on ICWA.

20. MARYLAND

There are no federally recognized tribes and no plans for any tribal-state agreements. The State Courts and the Social Service Department are aware of ICWA and have not encountered any problems in its implementation. The Maryland Commission on Indian Affairs and the Baltimore American Indian Center have been helpful to state and local social service departments, as well as Indian families dealing with ICWA.

21. MASSACHUSETTS

No response.

22. MICHIGAN

There are no plans to negotiate a tribal-state agreement, to enact court rules or to adopt social service procedures on ICWA.

23. MINNESOTA

There are eleven (11) reservations and all but one, Red Lake Chippewas, falls within P.L. 83-280 jurisdiction as Minnesota was a "mandatory" 280 state. The state has executed ICWA agreements with the Minnesota Chippewa Tribe (six reservations) and the Minnesota Sioux Tribe (three reservations). The Department of Public Welfare has issued Instructional Bulletins on ICWA for County Welfare Boards, Human Services Boards, Voluntary Child-Placing Agencies, County Commissioner Boards and County Attorneys. The State Courts have not issued special rules on ICWA, nor are there plans to do so. The biggest problem in implementation was dealing with the issue of subject matter jurisdiction and its affects on the State's jurisdiction under P.L. 83-280. Resolution to this issue was addressed in the tribal-state ICWA agreements.

24. MISSISSIPPI

No response.

25. MISSOURI

Within Missouri's geographical boundaries, there are no federally recognized tribes in the state and the Indian population is a small percentage of the total. There are no plans for any tribal-state agreements, courts rules or social service procedures on ICWA.

26. MONTANA

There are seven (7) reservations in Montana and the state is currently negotiating an ICWA agreement with the Flathead Tribe and Blackfeet Tribe. The Department of Social and Rehabilitation Services currently handles ICWA cases based on informal rules but the Social Services Bureau plans to formalize their rules in their manual by late fall. There are no plans to issue rules for state courts on ICWA.

27. NEBRASKA

There are three federally recognized tribes in Nebraska, a P.L. 83-280 state, and one tribe, Omaha, has petitioned to reassume exclusive jurisdiction pursuant to ICWA. The issue of tribal-state ICWA agreements is currently under discussion but legislative barriers may prevent such agreements. The Department of Welfare has not promulgated regulations on ICWA but there is an existing regulation that recognizes tribal court orders for foster care (AFDC). The State Courts are aware of ICWA but specific plans for rules have not been made.

28. **NEVADA**

Although there are no formal ICWA agreements with the four (4) Indian social services agencies or the tribes in Nevada, it is the policy of the Welfare Division to refer a child covered by ICWA to the appropriate Indian social service agency. The Department of Human Resources, Welfare Division, has developed formal procedures to be followed in handling ICWA cases. These procedures are included in the Social Services Manual.

29. **NEW HEMPSHIRE**

No response.

30. **NEW JERSEY**

There are no federally recognized tribes in New Jersey; therefore, there are no plans to negotiate a tribal-state ICWA agreement. There are no plans to enact court rules or social service procedures but steps have been taken to inform the appropriate Court or Department of Human Services official/worker, i.e., Administrative Office of the Courts, Interstate Liaison, Staff of Division of Youth and Family Services. Plans indicate that ICWA "State Court Guidelines" or applicable federal law, which ever is more advantage for the child, will be followed in any ICWA case in New Jersey.

31. **NEW MEXICO**

The New Mexico Supreme Court has not adopted, nor is it presently contemplating the adoption of, rules on ICWA but the Human Services Department has established informal procedures for handling ICWA cases. Formal procedures are currently being drafted. The State and the Mescalero Apache and Navajo Tribes have initiated negotiation steps for an ICWA agreement. The State Legislature has amended the Children's Code to conform to notice requirements of ICWA.

32. **NEW YORK**

There are nine (9) Indian reservations in New York. The state has not executed any tribal-state ICWA agreements but some feasibility studies have been completed. The Department of Social Services hopes to fund a demonstration project to develop a child welfare program for the Seneca Nation of Indians. Additionally, it has begun discussion with the Iroquois Nations into the feasibility of tribal-state implementation of ICWA. Funding has been the major problem in tribal implementation of ICWA.

33. NORTH CAROLINA

There is one (1) federally recognized tribe, Eastern Band of Cherokee, and several state-recognized tribes in North Carolina. There are no plans to adopt court rules on ICWA but the Department of Social Services will be adopting formal ICWA procedures in the near future. The state executed an agreement with the Eastern Band in January, 1981, but this was not the first child welfare agreement with the tribe.

34. NORTH DAKOTA

There are no ICWA tribal-state agreements but pre-ICWA foster care tribal-state agreements continue to be effective. There are no plans to adopt ICWA Court rules or social service procedures.

35. OHIO

There are no federally recognized tribes in Ohio; therefore, an ICWA tribal-state agreement is not planned. The Supreme Court of Ohio does not plan to issue any rules on ICWA but the Department of Public Welfare, Division of Social Services, plans to issue guidelines and promulgate rules on ICWA. These guidelines are currently in draft form but should be released in late fall as part of a child welfare manual.

36. OKLAHOMA

Oklahoma has thirty-seven (37) federally recognized tribes within its geographical boundaries and at this time, there are no formal ICWA tribal-state agreements. The Department of Human Services has been working closely with the various tribes; a great deal of cooperative training among the Department of Human Services; the Bureau of Indian Affairs (BIA), the CFR (Code of Federal Regulations) Court, and the tribes has been going on since the effective date of ICWA. More legal questions have developed over the adoption section of the Act than any other and parts of the Act have been challenged in the State Courts.

37. OREGON

An ICWA tribal-state agreement has not been executed with any tribe but the Children's Services Division of the Department of Human Resources plans to initiate negotiations in the near future. The Children's Services Division will publish their final ICWA Administrative Rules by the end of September, 1981, and these rules include the requirements relative to tribal-state agreements. There are no plans to enact Court rules on ICWA.

38. PENNSYLVANIA

Within Pennsylvania's geographical boundaries, there are no federally recognized tribes and only a small percentage of the total population is Indian. Neither the Pennsylvania Supreme Court nor the Department of Public Welfare have adopted rules or procedures on ICWA but all the Courts have received information on ICWA and are to provide the Court Administrative Office with required information for reports to the Secretary of Interior. Also, there are no plans for tribal-state agreements.

39. RHODE ISLAND

There are no federally recognized tribes in Rhode Island but the Narragansett Tribe has petitioned for acknowledgement. There are no plans for negotiating a tribal-state ICWA agreement. The Rhode Island Supreme Court has not issued any rules on ICWA nor are there any plans and the Department of Children and Rehabilitation Services and Their Families does not plan to adopt any procedures.

40. SOUTH CAROLINA

An ICWA agreement is not planned as there are no federally recognized tribes in South Carolina. There are no plans for adopting formal court rules. The Children and Family Services Division of the Department of Social Services will be working with their Legal Services Division to implement formal ICWA policy and procedures.

41. SOUTH DAKOTA

There are no plans for an ICWA tribal-state agreement or social service procedures. Recent South Dakota Supreme Court decisions have referred to ICWA "State Court Guidelines" but the Court has not adopted formal ICWA rules. Some Circuit Court Judges use informal arrangements with the South Dakota tribes and these arrangements seem to be working.

42. TENNESSEE

Within Tennessee's geographical boundaries, there are no federally recognized tribes; therefore, an ICWA tribal-state agreement has not been considered. The Tennessee Supreme Court does not plan to issue rules on ICWA nor does Department of Human Services plan to issue administrative procedures.

43. **TEXAS**

Status information not provided.

44. **UTAH**

An ICWA tribal-state agreement has not been enacted but negotiations are underway with the Ute Tribe at Ft. Duchesne. ICWA provisions are being included along with boundary designations, fishing and hunting, and imposition of sales taxes. The Utah Board of Juvenile Court Judges is considering the possibility of ICWA rules. The Division of Family Services has adopted regulation VPIC 235 in relation to state protection service intervention in ICWA cases.

45. **VERMONT**

There are no federally recognized tribes in Vermont but the Abenakis Tribe has petitioned for acknowledgment. There are no plans to adopt ICWA Court rules or social service procedures.

46. **VIRGINIA**

There are no federally recognized tribes in Virginia but the Rappahannock Tribe has petitioned for acknowledgment. An ICWA tribal-state agreement is not being considered nor will it be for quite some time. There are no plans for court rules or social service procedures on ICWA; however, the internal "Central Office Procedures Regarding Native American Indian and Alaskan Eskimo Children For Whom Adoption is the Goal" is followed by the Department of Welfare and all ICWA cases are referred to the Division of Social Services, Department of Welfare to assist in following these internal procedures and to assure compliance with the intent of the Act.

47. **WASHINGTON**

Region I, Department of Social and Health Service (DSHS), executed an ICWA agreement with the Spokane Tribe in March, 1981, and negotiations are nearing completion with the Colville Tribe. Other tribal-state ICWA agreements are planned but negotiations have not been initiated. Washington Indian child welfare statutes and administrative procedures predates ICWA and in this unprecedented move, the state set up by Local Indian Child Welfare Advisory Committees. In October of 1980, DSHS updated their Indian Affairs Policy to restate their commitment in terms of planning and service delivery to tribes in Washington. DSHS has adopted ICWA administrative rules in the Washington Administrative Code and these rules have been proceduralized in the caseworkers Manual G (Internal desk book). Court rules on ICWA are in the process of review and implementation.

48. WEST VIRGINIA

Within West Virginia's geographical boundaries, there are no federally recognized tribes and the Indian population is a small percentage of the total population. There are no plans for enactment of court rules or for negotiation of a tribal-state agreement. The Department of Welfare has no plans for adopting social service procedures on ICWA.

49. WISCONSIN

There are eleven (11) reservations in Wisconsin but there has not been negotiations of an ICWA tribal-state agreement. The Youth Policy and Law Center developed a chapter on ICWA for the Department of Health and Social Services' Handbook on Implementing the Wisconsin Children's Code. This Handbook was drafted for use by court and health and social services personnel. There are no plans for enactment of court rules.

50. WYOMING

There is only one (1) reservation, the Wind River Reservation, in Wyoming, and there are no plans to negotiate a tribal-state agreement with Wind River. The State Division of Public Assistance and Social Services (D-PASS) has no plans to issue ICWA procedures and the enactment of court rules have not been planned.

CHILD WELFARE RESEARCH NOTES #7 May 1984

Race and Ethnicity of Children in State Foster Care Systems

The foster care component of the States' child welfare systems addresses the needs of the community's most vulnerable families and children. Progress has been made in the past several years in substantially reducing both the number of children in foster care as well as reducing the average amount of time such children are receiving foster care services (CHILD WELFARE RESEARCH NOTES #1). However, there continues to be a shift in the racial and ethnic composition of the children in the States' foster care systems.

In 1945, at the time that World War II was coming to a close, the percentage of minority children in the foster care system was 17%. This proportion has increased until by 1982 it was estimated that 47% were minority children, with Black children comprising 80% of all minority children.

In 1980, the Office for Civil Rights conducted a national study of the racial and ethnic characteristics of children in foster care on a county basis (OCR). Subsequently, as part of the Voluntary Cooperative Information System (VCIS) data collection efforts by the American Public Welfare Association, data for 1982 were obtained from the participating States. These data have been used for a comparative analysis of the number of children in State foster care systems by race and ethnicity as shown in Table 1.

To adjust for population differences, the total State's population under 21 years was used to obtain the point prevalence rate (Rate) of children in foster care. The Rate is the number of children in foster care on a single day divided by the total number of children in the State less than 21 years. To eliminate the decimal point, this quotient is multiplied by 10,000. Thus a Rate of 33 indicates that 33 children per 10,000 children are in foster care on a single day. The higher the Rate, the more children in foster care on a single day.

To facilitate comparisons, the distributions of Rates were divided into five equal parts, 20% of the States in each part, and a quintile score (Q) assigned. A quintile score of 5 indicates that the State is part of the group of States with the 20% highest Rates, a quintile score of 1 was given to 20% of the States with the lowest Rates. A similar quintile scoring was computed for the actual number of children in foster care as shown in Tables 2-5.

Indian Children

With the passage of the Indian Child Welfare Act of 1978 and the Adoption Assistance and Child Welfare Act of 1980 there has been a directed effort to improve child welfare services for American Indian children. State agencies may be assigned custody and placement responsibility for Indian children by State or Indian courts. The number of Indian children in State operated foster care systems, the total number of Indian children less than 21 years, and the Rates are shown in Table 2.

The number of Indian children in State foster care systems varies from 0 to 622. There are 13 States with 100 or more Indian children in the State's foster care system; the largest number of Indian children in a State's foster care system is 622, in Minnesota. Arizona and New Mexico, which have large numbers of Indian children less than 21 years, have very low Rates, 10 and 13 respectively. These figures do not include the Indian children in foster care under the supervision of the Indian Tribal Organizations or private arrangements. Consequently, the reported State figure undercounts Indian children in foster care which may account for the low Rates in some States with large numbers of Indian children.

of BIA

Black Children

Black children are the largest minority group in State foster care systems and, as shown in Table 3, they vary from 5 to 15,898 children in foster care in the respective States. Rhode Island, District of Columbia, New York, Ohio, New Jersey, Massachusetts, Indiana, Kansas, Delaware, Minnesota and Colorado have Rates that exceed 120. Texas, Mississippi, Arkansas, Tennessee, Florida, and South Carolina, each with over 100,000 Black children less than 21 years, are in the lowest Rate quintile. The 15,898 Black children in New York is the largest racial or ethnic group in foster care in any one State.

The large numbers and Rates of Black children in State foster care systems may be due to the following factors:

- As the Black population migrated to the urban areas seeking employment, after World War II, Black children entered the foster care system at much faster rates than White children and this pattern continues.
- Beginning in the 1960s, there was an increase in the number of Black children living in female-headed, single-parent families and this pattern continues.

- During this period, Black children left the foster care system at a slower rate than White children resulting in an increase in the proportion of Black children in the foster care system with longer average duration of time in placement and this pattern continues.

This pattern may account for Jenkins' (1984) finding, based on the 1980 OCR data, that for 14 of the largest cities there were 77% minority children in foster care, including 63% Black, compared with the 42% minority children, 33% Black, for all the States.

Hispanic Children

The Hispanic children have the lowest Rates among the three minority groups as shown in Table 1. The number of Hispanic children in State foster care systems varies from 0 to 5,211 as shown in Table 4. The Rate for the Hispanic children living in the Northeast (Puerto Rican heritage), Connecticut, Massachusetts, New Jersey, New York and Pennsylvania, was 53; for the children living in the Southwest (Mexican heritage), Arizona, California, Colorado, New Mexico, and Texas, the Rate was 18; and for the children living in the Southeast (Cuban heritage), Florida, the Rate was 7. These differences reflect a combination of national origin, poverty level, urbanization and State policies as they impact on families with an Hispanic heritage.

White Children

The urbanized States generally have high numbers of White children in foster care as shown in Table 5. The number of White children in foster care varies from 66 to 15,544. California, Ohio, Indiana, Massachusetts, Minnesota, Missouri, Oregon, and Kansas have both high Rates and numbers of children in foster care. However, Pennsylvania, Florida, Illinois and Michigan have high numbers of White children but low Rates. Texas, with 2,703 White children in foster care, has the lowest foster care Rate for White children in the country, 7 per 10,000 children.

Community Orientation Towards Placement

Rates are quantitative indicators of States' orientation toward placement. Indications that placement decisions are affected by community factors was first suggested in the classic 1959 study by Maas and Engler. Jenkins (1984), using the Office for Civil Rights data examined the hypothesis, "...the way a community organizes itself, and its typical approach to handling problems, will be reflected in the placement system." Her analysis supported the hypothesis and the 1982 VCIS data reported above are also indicative of its validity. High Rates would indicate a propensity for a community's ready placement of children from families with problems while low Rates may indicate a reluctance to use placement as the treatment of choice. Which approach leads more readily to a sustained nurturing environment for the child has yet to be determined.

Program Variability

In general, as shown in Table 1, Rates vary across different racial and ethnic groups within States; Rates vary among the States for each of the racial and ethnic groups; and Rates vary both within and among the regions. An analysis of the 1980 Office for Civil Rights data by Jenkins (1983) found similar variability.

The Rates for each State reflect the Rates for each county within a State. The source of the variability noted above is a consequence, in part, of the differences among local agencies, particularly urban and non-urbanized service delivery areas. Thus, to fully understand a State's Rates necessitates an examination of local Rates.

Table 1

1982 POINT PREVALENCE RATES OF CHILDREN IN STATE FOSTER CARE SYSTEMS BY RACE AND ETHNICITY*

(Per 10,000 children)

	Indian		Black		Hispanic		White		Total	
Region/State	Rate	Q	Rate	Q	Rate	Q	Rate	Q	Rate	Q
1 Connecticut	79	4	50	2	66	5	28	4	45	4
1 Maine	189	5	74	3	17	3	54	5	57	5
1 Massachusetts[d]	194	5	133	5	74	5	47	5	52	5
1 New Hampshire	0	1	68	3	0	1	33	4	34	3
1 Rhode Island[c]	49	3	414	5	80	5	83	5	113	5
1 Vermont	223	5	171	5	37	5	41	5	45	4
2 New Jersey[d]	10	1	131	5	43	5	23	3	43	4
2 New York	(62)	3	167	5	53	5	26	3	60	5
3 Delaware[d]	0	1	125	4	30	4	33	4	52	5
3 Dist. of Col.[d]	75	4	208	5	7	2	24	3	176	5
3 Maryland	116	4	107	4	23	3	33	4	55	5
3 Pennsylvania	(23)	2	(112)	4	(43)	5	20	2	30	2
3 Virginia	14	2	82	3	5	2	26	3	40	4
3 West Virginia	39	3	96	4	12	2	26	3	29	2
4 Alabama	3	1	60	2	1	1	24	3	33	3
4 Florida	46	3	37	1	(7)	2	(17)	2	22	1
4 Georgia[c]	40	3	48	2	3	1	26	3	34	3
4 Kentucky[d]	0	1	83	3	8	2	34	4	38	3
4 Mississippi	10	1	25	1	1	1	13	1	20	1
4 North Carolina	40	3	42	2	0	1	16	1	25	2
4 South Carolina	0	1	38	1	0	1	18	2	26	2
4 Tennessee	0	1	39	1	3	1	21	2	26	2
5 Illinois	90	4	100	4	20	3	18	2	37	3
5 Indiana[d]	64	4	127	4	47	5	45	5	53	5
5 Michigan[c]	38	2	105	4	21	3	18	2	34	3
5 Minnesota[a]	345	5	177	5	32	4	37	5	46	4
5 Ohio[c]	(52)	3	135	5	(45)	5	33	4	64	5
5 Wisconsin	163	4	86	3	35	4	24	3	31	2
6 Arkansas	17	2	29	1	2	1	15	1	18	1
6 Louisiana	34	2	62	2	7	2	29	4	41	4
6 New Mexico	13	1	63	2	19	3	10	1	19	1
6 Oklahoma	34	2	44	2	15	3	16	1	20	1
6 Texas	26	2	19	1	8	2	7	1	10	1
7 Iowa	(173)	5	94	4	33	3	27	3	33	3
7 Kansas	55	3	122	4	35	4	43	5	50	4
7 Missouri	16	2	89	3	9	2	30	4	39	3
7 Nebraska[a]	312	5	103	4	52	5	37	5	48	4

(continued)

Table 1 (continued)

1982 POINT PREVALENCE RATES OF CHILDREN
IN STATE FOSTER CARE SYSTEMS BY RACE AND ETHNICITY*
(Per 10,000 children)

	Indian		Black		Hispanic		White		Total	
Region/State	Rate	Q	Rate	Q	Rate	Q	Rate	Q	Rate	Q
8 Colorado[b/]	52	3	75	3	32	4	22	2	27	2
8 Montana	90	4	199	5	18	3	27	3	33	3
8 North Dakota	205	5	60	2	33	4	21	2	31	2
8 South Dakota	197	5	62	2	0	1	13	1	33	3
8 Utah	130	4	66	2	28	4	19	2	21	1
8 Wyoming	38	2	35	1	15	3	12	1	13	1
9 Arizona[a/]	10	1	23	1	10	2	11	1	12	1
9 California	47	3	109	4	25	4	29	4	40	4
9 Hawaii	(39)	3	14	1	1	1	13	1	18	1
9 Nevada[c/]	32	2	90	3	13	3	40	5	41	4
0 Alaska[d/]	171	5	30	1	2	1	25	3	54	5
0 Idaho[d/]	71	4	87	3	21	3	21	2	23	2
0 Oregon	95	4	244	5	32	4	47	5	58	5
0 Washington[ab/]	176	5	85	3	20	3	33	4	41	4

---

* Data from the Voluntary Cooperative Information System (VCIS) except as noted in footnote d/ and () below.

Rate Point Prevalence Rate equals the number of children in foster care of a specific racial/ethnic group on a single day divided by the total number of children less than 21 years of the specific racial or ethnic group expressed per 10,000 children, i.e., a Rate of 52 for Colorado in the Indian column indicates that 52 Indian children per 10,000 Indian children in that State are in foster care on a single day.

Q A Quintile (Q) represents the ranking when the distribution is divided into five parts; a Quintile of 5 indicates the State is among the the highest 20% of the States for that distribution.

a/ State estimates reported to VCIS.
b/ Adjusted for whole month rather than single day reporting.
c/ Includes children in in-home care as well.
d/ Data from the 1980 Office for Civil Rights (OCR) study when no race/ethnicity data were reported to VCIS.

() Parenthesis indicates that specific race/ethnicity data were not provided and an estimate was computed based on the OCR percentage.

Table 2

1982 POINT PREVALENCE RATES AND NUMBER OF INDIAN CHILDREN IN STATE FOSTER CARE SYSTEMS*
(In sequence by number of children in Foster Care)

Region/State	F.C.	Q	Indian Pop. -21	Rate	Q
5 Minnesota[a]	622	5	18,016	345	5
0 Alaska[d]	536	5	31,408	171	5
0 Washington[ab]	497	5	27,069	176	5
8 South Dakota	488	5	24,832	197	5
9 California	378	5	79,737	47	3
6 Oklahoma	257	5	76,464	34	2
5 Wisconsin	238	5	14,599	163	4
8 North Dakota	226	5	11,022	205	5
8 Montana	171	5	18,988	90	4
7 Nebraska[a]	147	5	4,698	312	5
8 Utah	145	4	11,132	130	4
4 North Carolina	118	4	29,321	40	3
0 Oregon	114	4	11,972	95	4
2 New York[e]	97	4	15,709	62	3
9 Arizona[a]	83	4	80,120	10	1
6 New Mexico	73	4	54,180	13	1
5 Michigan[c]	71	4	18,626	38	2
5 Illinois	57	4	6,357	90	4
1 Massachusetts[d]	57	4	2,944	194	5
7 Iowa[e]	47	4	2,732	173	5
8 Colorado[b]	40	3	7,763	52	3
1 Maine	38	3	2,013	189	5
6 Texas	38	3	14,563	26	2
3 Maryland	37	3	3,201	116	4
0 Idaho[d]	37	3	5,243	71	4
7 Kansas	36	3	6,523	55	3
4 Florida	31	3	6,718	46	3
5 Ohio[e]	23	3	4,438	52	3
5 Indiana[d]	19	3	2,972	64	4
9 Nevada	19	3	5,868	32	2
6 Louisiana	18	3	5,355	34	2
1 Connecticut	13	2	1,652	79	4
8 Wyoming	13	2	3,460	38	2
4 Georgia	11	2	2,770	40	3
1 Vermont	9	2	404	223	5
3 Pennsylvania[e]	8	2	3,465	23	2
7 Missouri	7	2	4,516	16	2
1 Rhode Island[c]	6	2	1,234	49	3
6 Arkansas	6	2	3,537	17	2
9 Hawaii[e]	4	2	1,013	39	3

(continued)

Table 2 (Continued)

NUMBER AND POINT PREVALENCE RATES OF INDIAN CHILDREN IN FOSTER CARE IN 1982*

Region/State	F.C.	Q	Indian Pop. -21	Rate	Q
3 Virginia	3	1	2,163	14	2
4 Mississippi	3	1	2,889	10	1
2 New Jersey[d]	3	1	2,980	10	1
3 Dist. of Col.[d]	2	1	265	75	4
3 West Virginia	2	1	515	39	3
4 Alabama	1	1	3,098	3	1
3 Delaware[d]	0	1	0	0	1
4 Kentucky[d]	0	1	1,301	0	1
1 New Hampshire	0	1	497	0	1
4 South Carolina	0	1	2,463	0	1
4 Tennessee	0	1	1,682	0	1

---

*	Data from the Voluntary Cooperative Information System (VCIS) except as noted in footnotes d/ and e/ below.
F.C.	Number of children in foster care on any one day in 1982.
Rate	Point Prevalence Rate equals the number of children in foster care on a single day divided by the total number of children less than 21 years per 10,000 children, i.e., a Rate of 14 for Virginia indicates that 14 children per 10,000 Indian children are in the State's foster care system on a single day.
Q	A Quintile (Q) represents the ranking when the distribution is divided into five parts; a Quintile of 5 indicates the State is among the highest 20% of the States for that distribution.
a/	States which reported estimates to VCIS.
b/	Adjusted for whole month rather than single day reporting.
c/	Includes children in in-home care as well.
d/	Data from the 1980 Office for Civil Rights (OCR) study when no race/ethnicity data were reported to VCIS by eight States.
e/	Specific race/ethnicity data were not provided and an estimate was computed based on the OCR percentage.

Table 3

1982 POINT PREVALENCE RATES AND NUMBER OF BLACK CHILDREN IN STATE FOSTER CARE SYSTEMS*

(In sequence by number of children in Foster Care)

Region/State	F.C.	Q	Black Pop. -21	Rate	Q
2 New York	15,898	5	949,586	167	5
9 California	7,918	5	724,854	109	4
5 Illinois	7,252	5	728,277	100	4
5 Ohio[c]	5,888	5	436,208	135	5
5 Michigan[c]	5,306	5	507,684	105	4
2 New Jersey[d]	5,123	5	389,683	131	5
3 Pennsylvania[e]	4,559	5	405,916	112	4
3 Maryland	4,169	5	388,290	107	4
6 Louisiana	3,439	5	557,941	62	2
3 Virginia	3,286	5	400,324	82	3
3 Dist. of Col.[d]	3,166	4	152,224	208	5
4 Georgia[c]	3,088	4	637,672	48	2
4 North Carolina	2,328	4	556,143	42	2
5 Indiana[d]	2,294	4	180,712	127	4
4 Florida	2,167	4	590,995	37	1
4 Alabama	2,016	4	336,727	60	2
7 Missouri	1,928	4	217,414	89	3
4 South Carolina	1,614	4	419,558	38	1
1 Connecticut	1,460	4	293,102	50	2
6 Texas	1,373	4	723,651	19	1
1 Massachusetts[d]	1,232	3	92,891	133	5
4 Tennessee	1,189	3	307,235	39	1
4 Mississippi	1,047	3	419,751	25	1
4 Kentucky[d]	905	3	108,794	83	3
5 Wisconsin	757	3	88,319	86	3
7 Kansas	671	3	55,162	122	4
3 Delaware[d]	523	3	41,803	125	4
1 Rhode Island[c]	505	3	12,209	414	5
6 Arkansas	491	3	171,387	29	1
5 Minnesota[a]	423	3	23,860	177	5
6 Oklahoma	397	3	90,066	44	2
0 Washington[ab]	389	2	43,625	85	3
0 Oregon	384	2	15,748	244	5
8 Colorado[b]	330	2	42,048	75	3
3 West Virginia	237	2	24,635	96	4
7 Nebraska[a]	229	2	22,317	103	4
9 Nevada[c]	210	2	23,233	90	3
7 Iowa	179	2	19,141	94	3
9 Arizona[a]	75	2	32,577	23	1
6 New Mexico	67	2	10,563	63	2
8 Utah	28	2	4,213	66	2

(continued)

Table 3 (continued)

1982 POINT PREVALENCE RATES AND NUMBER OF BLACK CHILDREN IN STATE FOSTER CARE SYSTEMS*

Region/State	F.C.	Q	Black Pop. -21	Rate	Q
0 Alaska d/	17	1	5,608	30	1
8 Montana	15	1	752	199	5
1 New Hampshire	12	1	1,770	68	3
1 Maine	10	1	1,356	74	3
0 Idaho d/	10	1	2,972	87	3
9 Hawaii	10	1	7,041	14	1
1 Vermont	9	1	527	171	5
8 North Dakota	7	1	1,159	60	2
8 South Dakota	6	1	971	62	2
8 Wyoming	5	1	1,444	35	1

---

* Data from the Voluntary Cooperative Information System (VCIS) except as noted in footnotes d/ and e/ below.

F.C. Number of children in foster care on any one day in 1982.

Rate Point Prevalence Rate equals the number of children in foster care on a single day divided by the total number of children less than 21 years per 10,000 children, i.e., a Rate of 30 for Alaska indicates that 30 children per 10,000 Black children are in the State's foster care system on a single day.

Q A Quintile (Q) represents the ranking when the distribution is divided into five parts; a Quintile of 5 indicates the State is among the highests 20% of the States for that distribution.

a/ States which reported estimates to VCIS.
b/ Adjusted for whole month rather than single day reporting.
c/ Includes children in in-home care as well.
d/ Data from the 1980 Office for Civil Rights (OCR) study when no race/ethnicity data were reported to VCIS by eight States.
e/ Specific race/ethnicity data were not provided and an estimate was computed based on the OCR percentage.

Table 4

1982 POINT PREVALENCE RATES AND NUMBER OF HISPANIC CHILDREN IN STATE FOSTER CARE SYSTEMS*

(In sequence by number of children in Foster Care)

Region/State	F.C.	Q	Hispanic Pop. -21	Rate	Q
9 California	5,211	5	2,082,972	25	4
2 New York	3,728	5	697,596	53	5
6 Texas	1,115	5	1,429,166	8	2
2 New Jersey[d/]	930	5	214,895	43	5
5 Illinois	612	5	301,223	20	3
8 Colorado[b/]	522	5	159,110	32	4
1 Massachusetts[d/]	515	5	69,815	74	5
1 Connecticut	407	5	62,043	66	5
6 New Mexico	402	5	216,921	19	3
3 Pennsylvania[e/]	352	5	73,583	43	5
4 Florida[e/]	330	4	279,491	7	2
5 Ohio[ce/]	252	4	55,898	45	5
9 Arizona[a/]	205	4	213,961	10	3
5 Indiana[d/]	195	4	41,801	47	5
5 Michigan[c/]	169	4	80,067	21	3
0 Washington[ab/]	126	4	59,627	20	3
5 Wisconsin	113	4	32,043	35	4
7 Kansas	108	4	30,812	35	4
0 Oregon	103	4	32,164	32	4
8 Utah	89	4	31,334	28	4
7 Nebraska[a/]	73	3	14,123	52	5
1 Rhode Island[c/]	69	3	8,574	80	5
3 Maryland	60	3	25,600	23	3
5 Minnesota[a/]	51	3	16,069	32	4
6 Oklahoma	42	3	28,348	15	3
0 Idaho[d/]	41	3	19,172	21	3
7 Iowa	41	3	12,524	33	4
9 Nevada[c/]	30	3	23,398	13	3
6 Louisiana	27	3	41,002	7	2
7 Missouri	21	3	22,973	9	2
8 Wyoming	18	3	11,960	15	3
3 Virginia	15	2	31,591	5	2
3 Delaware[d/]	14	2	4,728	30	4
4 Kentucky[d/]	9	2	11,732	8	2
8 Montana	9	2	5,104	18	3
4 Georgia[c/]	7	2	26,144	3	1
8 North Dakota	7	2	2,108	33	4
3 West Virginia	6	2	4,857	12	2
9 Hawaii	5	2	37,887	1	1
4 Tennessee	5	2	16,716	3	1
1 Vermont	5	2	1,348	37	5

(continued)

Table 4 (continued)

1982 POINT PREVALENCE RATES AND NUMBER OF HISPANIC CHILDREN IN STATE FOSTER CARE SYSTEMS*

Region/State	F.C.	Q	Hispanic Pop. -21	Rate	Q
1 Maine	4	1	2,316	17	3
3 Dist. of Col.d/	3	1	4,086	7	2
6 Arkansas	2	1	8,192	2	1
4 Alabama	1	1	14,061	1	1
0 Alaskad/	1	1	4,376	2	1
4 Mississippi	1	1	11,216	1	1
1 New Hampshire	0	1	2,565	0	1
4 North Carolina	0	1	24,097	0	1
4 South Carolina	0	1	14,795	0	1
8 South Dakota	0	1	5,544	0	1

---

*	Data from the Voluntary Cooperative Information System (VCIS) except as noted in footnotes d/ and e/ below.
F.C.	Number of children in foster care on any one day in 1982.
Rate	Point Prevalence Rate equals the number of children in foster care on a single day divided by the total number of children less than 21 years per 10,000 children, i.e., a Rate of 17 for Maine indicates that 17 children per 10,000 Hispanic children are in the State's foster care system on a single day.
Q	A Quintile (Q) represents the ranking when the distribution is divided into five parts; a Quintile of 5 indicates the State is among the highest 20% of the States for that distribution.
a/	State estimates reported to VCIS.
b/	Adjusted for whole month rather than single day reporting.
c/	Includes children in in-home care as well.
d/	Data from the 1980 Office for Civil Rights (OCR) study when no race/ethnicity data were reported to VCIS by eight States.
e/	Specific race/ethnicity data were not provided and an estimate was computed based on the OCR percentage.

Table 5

1982 POINT PREVALENCE RATES AND NUMBER OF WHITE CHILDREN IN STATE FOSTER CARE SYSTEMS*
(In sequence by number of children in Foster Care)

Region/State	F.C.	Q	White Pop. -21	Rate	Q
9 California	15,544	5	5,419,519	29	4
2 New York	11,033	5	4,199,703	26	3
5 Ohio[c]	10,588	5	3,217,528	33	4
3 Pennsylvania	9,076	5	3,305,418	20	2
5 Indiana[d]	7,843	5	1,732,200	45	5
1 Massachusetts[d]	7,805	5	1,675,793	47	5
4 Florida[e]	6,276	5	2,181,691	17	2
5 Illinois	5,334	5	2,945,163	18	2
5 Michigan[c]	4,960	5	2,704,560	18	2
5 Minnesota[a]	4,933	5	1,350,821	37	5
0 Washington[ab]	4,330	4	1,221,364	33	4
7 Missouri	4,201	4	1,406,054	30	4
2 New Jersey[d]	4,187	4	1,846,601	23	3
4 Kentucky[d]	3,975	4	1,183,372	34	4
0 Oregon	3,736	4	799,545	47	5
5 Wisconsin	3,650	4	1,518,744	24	3
3 Virginia	3,531	4	1,352,055	26	3
4 Georgia[c]	3,373	4	1,311,171	26	3
3 Maryland	3,187	4	977,937	33	4
7 Kansas	3,048	4	705,705	43	5
6 Louisiana	2,948	3	1,012,842	29	4
6 Texas	2,703	3	3,821,425	7	1
4 Tennessee	2,611	3	1,246,016	21	2
7 Iowa	2,597	3	964,571	27	3
1 Connecticut	2,400	3	851,688	28	4
1 Rhode Island[c]	2,320	3	279,367	83	5
4 North Carolina	2,299	3	1,423,214	16	1
4 Alabama	2,261	3	946,058	24	3
1 Maine	2,032	3	378,549	54	5
8 Colorado[b]	1,903	3	843,786	22	2
7 Nebraska[a]	1,869	3	503,083	37	5
3 West Virginia	1,642	2	637,057	26	3
6 Oklahoma	1,359	2	841,818	16	1
4 South Carolina	1,311	2	712,571	18	2
8 Utah	1,128	2	590,096	19	2
1 New Hampshire	1,007	2	308,614	33	4
6 Arkansas	943	2	717,972	15	1
9 Nevada[c]	853	2	215,447	40	5
9 Arizona[a]	755	2	717,972	11	1
0 Idaho[d]	732	2	340,600	21	2
4 Mississippi	726	2	543,128	13	1

(continued)

Table 5 (continued)

1982 POINT PREVALENCE RATES AND NUMBER OF WHITE CHILDREN IN STATE FOSTER CARE SYSTEMS[*]

Region/State	F.C.	Q	White Pop. -21	Rate	Q
1 Vermont	725	1	176,343	41	5
8 Montana	674	1	253,671	27	3
3 Delaware[d/]	520	1	157,761	33	4
8 North Dakota	471	1	219,183	21	2
6 New Mexico	346	1	342,315	10	1
8 South Dakota	291	1	221,081	13	1
0 Alaska[d/]	271	1	108,888	25	3
8 Wyoming	196	1	162,966	12	1
9 Hawaii	134	1	103,030	13	1
3 Dist. of Col.[d/]	66	1	27,840	24	3

---

[*] Data from the Voluntary Cooperative Information System (VCIS) except as noted in footnotes d/ and e/ below.

F.C. Number of children in foster care on any one day in 1982.

Rate Point Prevalence Rate equals the number of children in foster care on a single day divided by the total number of children less than 21 years per 10,000 children, i.e., a Rate of 41 for Vermont indicates that 41 children per 10,000 White children are in the State's foster care system on a single day.

Q A Quintile (Q) represents the ranking when the distribution is divided into five parts; a Quintile of 5 indicates the State is among the highest 20% of the States for that distribution.

a/ State estimates reported to VCIS.
b/ Adjusted for whole month rather than single day reporting.
c/ Includes children in in-home care as well.
d/ Data from the 1980 Office for Civil Rights (OCR) study when no race/ethnicity data were reported to VCIS by eight States.
e/ Specific race/ethnicity data were not provided and an estimate was computed based on the OCR percentage.

Technical Notes

DATA SOURCES

- The Voluntary Cooperative Information System (VCIS, Fiscal Year, 1982). The American Public Welfare Association implemented a voluntary system to collect child welfare information about children less than 21 years in substitute care. Forty-eight States responded with aggregate information for varying reporting periods and for varying time periods. The State aggregated data spans the periods beginning January 1, 1981 to March 31, 1983 with most States reporting for a 12 month period and some States for nine, six and three month periods. The model group was 15 States for the Federal Fiscal Year 1982. States also varied in their definition of who was included in their report. As States did not respond to all of the items, the data for each item represents a different aggregation of States. (American Public Welfare Association, "Voluntary Cooperative Information System," grant number 90-PD10021.)

- The Office for Civil Rights 1980 Survey (OCR, 1980). This was a national county-specific census conducted by the Office for Civil Rights of all children in the legal custody of the agency for referral or out-of-home placement as of January 8, 1980 for a limited set of information items. A high rate of return was achieved, 99.9% of the counties participated. Agencies were required, by court order, to participate. The information is aggregated by county, State, and national totals. The findings from the study are reported in Office for Civil Rights, Department of Health and Human Services, 1980 Children and Youth Referral Survey: Public Welfare and Social Service Agencies, 1981.

- 1980 Census of Population, General Population Characteristics, Vol 1, Series PC 80-1-B, U.S. Bureau of Census, 1980, Tables 22 and 67.

REFERENCES

CHILD WELFARE RESEARCH NOTES #1, Administration for Children, Youth and Families, Human Development Services, December 1983.

Shirley Jenkins et al, "Ethnic Differentials in Foster Care Placements," Social Work Research and Abstracts, Vol. 19, No. 4, National Association of Social Workers, Inc., Winter 1983,.

Shirley Jenkins, Beverly Diamond, and John Grundy, "A Social Analysis of Foster Care Data," (paper, American Orthopsychiatric Association Conference, 1984).

Henry S. Maas and Richard E. Engler, Jr., Children in Need of Parents, New York, Columbia University Press, 1959.

COMMENT

- o The definitions of race/ethnicity are in accordance with State definitions.
- o The 1980 OCR data were used for those States which did not report any race/ethnicity data to VCIS. Where the reported data included combined race/ethnic groups estimates were made using the OCR data. Adjustments were also made for whole month rather than single day reporting. Some States reported children receiving in-home services and these are noted in the tables.
- o The child population less than 21 years in 1980 was used in computing the point prevalence rates. Race/ethnicity by age tables for 1982 were not available. Between 1980 and 1982 there was an increase in the number of children less than six years and a decrease in the number of children six years or older. The population less than 21 years decreased by 1.6 percent.

This note was prepared by Dr. Charles P. Gershenson with the assistance of Mrs. Vardrine Carter and Mrs. Lois Harris, Administration for Children, Youth and Families, Office of Human Development Services, Box 1182, Washington, D.C. 20013. No permission is necessary to reproduce this note. Suggestions for additional topics are welcomed.

Senator **Andrews**. Senator Gorton, do you have questions?

Senator **Gorton**. I will submit my questions for the record.

Senator **Andrews**. Senator Gorton has questions he will submit for the record, and other members of the committee might well have questions they will submit for the record.

Our next witness is the executive director of the Association of American Indian Affairs, Mr. Steven Unger.

Let me assure you, Mr. Director, that we have your prepared statement. It will be included in the record as though you uttered every word, and we would be glad to have you summarize it so that we leave a little bit more time for questions.

STATEMENT OF STEVEN UNGER, EXECUTIVE DIRECTOR, THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC., ACCOMPANIED BY GREG ARGEL, PROGRAM ASSISTANT, AND BERTRAM E. HIRSCH, ATTORNEY-AT-LAW

Mr. **Unger**. Thank you, Mr. Chairman. I will be glad to summarize our statement. With me on my left is Bert Hirsch, an attorney-at-law, and on my right, Greg Argel, of the association's staff.

Ten years ago this month the predecessor to this committee held oversight hearings on Indian child welfare needs at which it received shocking testimony from Indian people from around the Nation about their abusive treatment by State agencies. Those oversight hearings eventually led to enactment of the Indian Child Welfare Act.

The association is a nonprofit national citizens organization, entirely supported by its members and contributors, who are Indian and non-Indian. We appreciate the continuing interest of this committee in Indian child welfare needs and think that congressional concern is perhaps the most significant factor in helping Indian tribes meet their needs.

The association's comments this morning will focus on three areas which we feel are the unfinished agenda that Congress has in regard to Indian child welfare. These areas are: (1) The need for local day schools for all American Indians, so that no Indian child is forced to be separated from his or her parents to be placed in Federal boarding schools. This need is particularly urgent in regard to large numbers of elementary age children at the Navajo reservation; (2) The large and disproportionate number of Indian youth arrested and often incarcerated in the juvenile justice system; and (3) The need, as we have heard this morning, for more adequate funding for Indian programs under the Indian Child Welfare Act, and for certain technical amendments which we have submitted to the committee staff.

Title IV of the Indian Child Welfare Act recognized that the massive numbers of Indian children placed in boarding schools were part of a similar concern to which Congress paid its attention in the matter of adoptive and foster care placement of Indian children. Title IV stated, "It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families."

As this committee conducts its oversight hearing today, the most significant part of the unfinished agenda of the Indian Child Welfare Act is the continued placement—unwarranted, unjust, unhealthy, and unneeded—of vulnerable Indian children in Federal boarding schools.

The findings of the BIA, in its study done pursuant to title IV, are that 20,000 Indian children live in BIA boarding schools or dormitories; 5,000 of them are aged 10 or less; more than 10,000 of the children are in the elementary grades; 75 percent of the Navajo children in boarding school are in the elementary grades. Almost one out of every two Indian students served by BIA schools today are taken from their families and forced to spend approximately 9 months of each year in a boarding school or dormitory.

We have submitted detailed documentation coming from Government records of the numbers of children and their grade levels.

We have also examined State law in regard to the placement of children. We have found no other instance in the United States where taking children from their families is imposed on a group of people. Indeed, examining States that have small, rural, isolated populations, we found that often there is solicitude toward providing day schools for the families that need them. In South Dakota, for example, a petition by the parents of 15 eligible students mandates that a new day school be provided.

Can the Government of the United States, which in section 3 of the Indian Child Welfare Act declares that: "it is the policy of this Nation to protect the best interest of Indian children and to promote the stability and security of Indian tribes and familes," afford to do less?

We examine in our testimony the long history, the horrible and tragic history, of the boarding schools, why they were originally conceived and put on Indian reservations, and the rationale still put forth today by the BIA. That this is a compelling child welfare issue can readily be summarized: Even if it were conceivable that all the educational needs of a child could be taken care of in the boarding school—and I emphasize again that we are talking about 10-, 11-, 12-, 9-, 8-, and 7-year-olds in the schools—it is still the emotional aspects of a child's development that cannot be taken care of by a matron or even a dozen matrons in a dormitory.

We have seen Indian communities make remarkable efforts to get day schools to replace the boarding schools that the BIA provides: The Alamo Navajo community in New Mexico is one example. At the Navajo Black Mesa community in Arizona the parents put together abandoned Atomic Energy Commission trailers into a building—which the BIA tried to condemn—so that they would not have to send their children to boarding school.

We feel it is a great indictment of the U.S. Bureau of Indian Affairs that the boarding school system continues to exist and that the children are made to suffer. The Bureau has never made it clear to Navajo parents that day schools are an option for them, that food and clothing can be brought to the families, and that the children can be cared for in the families while they learn.

In our written statement, we outline the data that we believe should be obtained to create a detailed day school implementation plan. Such a plan can be done by the Bureau with the affected tribes, especially the Navajos. We believe it should be submitted to this committee no later than 1 year from today and should include recommended funding authorization levels.

As we meet this morning, there are more Indian children in BIA boarding schools and dormitories than there were Cherokees force marched to Oklahoma during the infamous and tragic "Trail of Tears" in the 1830's that all American children learn about as a great shame of the United States.

The second area that we are especially concerned about is juvenile justice. There are approximately 25,000 Indian juvenile arrests per year. An AAIA survey found that Indian children are incarcerated in State institutions at approximately three times the non-Indian rate. Adequate programs for Indian juveniles are a great need perceived by many tribes, and one that also cries out for congressional investigation and oversight.

Thank you. I will be happy to answer any questions at this time.

Senator **Andrews**. Thank you very much for an excellent statement. It is pretty well all inclusive and gives us a good insight into your feelings and your organization's feelings, and we appreciate your taking the time to be here.

[The prepared statement follows. Testimony resumes on p. 96.]

PREPARED STATEMENT OF STEVEN UNGER, EXECUTIVE DIRECTOR, ON BEHALF OF THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.

I am Steven Unger, Executive Director of the Association on American Indian Affairs, Inc. Accompanying me are Greg Argel of the Association staff, and Bertram E. Hirsch, Attorney-at-Law.

The Association on American Indian Affairs is a private, non-profit, national citizens' organization. Policies and programs of the Association are formulated by a Board of Directors, the majority of whom are American Indian and Alaska Native. The Association is completely dependent upon contributions from its approximately 50,000 members and contributors, Indian and non-Indian.

The Association commends this Committee for its continuing interest in vital Indian child welfare needs, as evidenced by this hearing today. The interest and work of this Committee was sparked when, during the 1970s, Indian witnesses appeared before it and the House Interior Committee with horror stories of abusive child welfare practices on the part of federal and state agencies that shocked the conscience of the Congress and the Nation.

The Indian Child Welfare Act was passed into law five years ago in response to those hearings. Prior to that, as the Congress found, the integrity, stability and security of Indian families and tribes had been placed in serious jeopardy--and sometimes destroyed--by abusive practices of state social service agencies and courts that denied Indian children, parents and families fundamental fairness in child custody proceedings. Thousands of Indian children had been separated from their families for placement in foster and adoptive homes, and in institutions. A significant number of placements, according to Congressional findings, were unjust and unwarranted, resulting from the insensitivity, and sometimes arrogance, of non-Indian institutions towards Indian families and tribes. State activities placing Indian children away from their families and tribal communities were often financed and participated in by the U.S. Bureau of Indian Affairs.

The Indian Child Welfare Act recognized that "there is no resource...more vital to the continued existence and integrity of Indian tribes than their children." The Act protects Indian families and tribes by providing legal safeguards against the unwarranted intrusion by government into Indian family life. It also authorizes Indian community child and family service programs "to prevent the breakup of Indian families and...to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort."

The Bureau of Indian Affairs has issued guidelines to assist state courts in the implementation of the Indian Child Welfare Act. These guidelines are generally consistent with the Act's spirit and encourage approaches that will safeguard the protections enacted by the Congress. The Bureau has also provided assistance to Indian tribes and families to protect their rights and develop family and child welfare programs.

A number of states have entered into cooperative agreements with tribal family and social service programs in an effort to carry out the goals of the Act in a manner consistent with tribal needs. These efforts have resulted in state laws, regulations, legislative resolutions, financing arrangements, and tribal-state agreements. For example, the Oklahoma Indian Child Welfare Act facilitates implementation on the state level of the federal law. Kansas and South Dakota have provided tribal social services programs with significant funding. Several states have licensed tribal and other Indian child welfare programs to give them authority to operate state-wide in providing services to Indian, as well as non-Indian children. A resolution of the Alaska legislature has requested the governor of that state to take all necessary measures to assure the proper implementation of the Act. The California legislature recently memorialized Congress to increase appropriations for Indian programs funded under Title II.

The Act has even had an international impact. As nearby as Canada and as distant as Australia, Native peoples have looked to the accomplishments American Indian tribes have made through the Indian Child Welfare Act as an example that gives hope in their own countries. The governments of these countries have examined the workings of the Act as an example of an enlightened reform of public policy towards Native people.

The Association's comments today will focus on three areas that we believe are the unfinished and unfulfilled agenda of the Indian Child Welfare Act. These areas are:

1) The need for local day schools for all American Indian, especially Navajo, communities, so that no Indian child is forced to be separated from his or her parents to be placed in federal boarding schools. This need is particularly urgent in regard to elementary-age children;
2) The large and disproportionate number of Indian youth arrested and often incarcerated in the juvenile justice system; and
3) The need for adequate funding for Indian programs under the Indian Child Welfare Act, and for technical amendments to assure that the Act functions as Congress intended.

I. THE NEED FOR DAY SCHOOLS

The Indian Child Welfare Act successfully addressed the problem of the unwarranted and unjust placement of Indian children in foster care and adoptive homes. Title IV of the Act recognized that the massive numbers of Indian children placed in boarding schools were part of a similar concern, stemming from almost two centuries of misguided federal policy towards Indian family life.

In Title IV the Congress stated: "It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families."

As this Committee conducts its oversight hearing today, the most significant part of the unfinished agenda of the Indian Child Welfare Act is the continued placement--unwarranted, unjust, unhealthy, and unneeded--of vulnerable Indian children in federal boarding schools. Thousands of these children are in the elementary grades.

The absence of day schools on Indian reservations, especially on the Navajo Reservation, is perhaps the greatest indictment of federal Indian policy in our time.

While the harmful effects of the boarding schools have been known for generations, and while this Committee and the Congress as a whole have urged reform of the situation for years, these expressions of Congressional intent have been continually frustrated by the Bureau of Indian Affairs.

The findings of the study mandated by Title IV of the Indian Child Welfare Act were these:

- Almost 20,000 Indian children live in BIA boarding schools and dormitories;
- Almost 5,000 of them are age 10 years old or less;
- More than 10,000 of the children (55 percent) are in the elementary grades (K through 8);
- The great majority of Indian children in the boarding schools are Navajo;
- 75 percent of the Navajo children in boarding school are in the elementary grades;
- Almost one out of every two Indian students served by the BIA today (45 percent to be exact) are taken from their families and forced to spend approximately nine months of each year in a boarding school or dormitory.

To the best knowledge of the Association on American Indian Affairs, there is no other school system in the United States that imposes this tragedy on the families who depend upon it.

On the following three pages is a detailed breakdown by age, grade level, and location of the Indian children in BIA boarding schools and dormitories. The information is taken from the BIA's Title IV study.

AGES of
INDIAN CHILDREN in
BIA BOARDING SCHOOLS
and DORMITORIES

Age	Children
Five years old	117
Six years old	566
Seven years old	859
Eight years old	954
Nine years old	1149
Ten years old	1156
Eleven years old	1290
Twelve years old	1324
Thirteen years old	1469
Fourteen years old	1884
Fifteen years old	2153
Sixteen years old	2004
Seventeen years old	1899
Eighteen years old	1263
Nineteen years old	621
Twenty years old	236
Not Available	248
Total	19,192

GRADE LEVELS of INDIAN CHILDREN in BIA BOARDING SCHOOLS and DORMITORIES

Grade	Children
Kindergarten	312
First	747
Second	1101
Third	1153
Fourth	1287
Fifth	1448
Sixth	1326
Seventh	1538
Eighth	1619
Ninth	2465
Tenth	2373
Eleventh	1894
Twelfth	1825
Not Available	104
Total	19,192

INDIAN CHILDREN in
BIA BOARDING SCHOOLS
and DORMITORIES: GEOGRAPHIC BREAKDOWN

BIA Area Office	Elementary Grades (K-8)	High School (9-12)	Total
	Indian Children Boarded		
Aberdeen	598	742	1340
Anadarko	136	559	695
Billings	114	38	152
Juneau	1	390	391
Muskogee	289	338	627
Phoenix	479	2291	2770
Albuquerque	180	480	660
Navajo	8601	3371	11,972
Portland	116	252	368
Eastern	17	96	113
Total	10,531	8557	19,088
		Grade not available	104
			19,192

In preparation for these hearings, the Association reviewed the provisions of state law regarding the establishment of schools. In the nine states reviewed, all of which have BIA boarding students (Arizona, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota and Utah), the Association found no instances in which non-Indian children were by law forced to attend boarding schools. On the contrary, where there are special provisions in state law to provide for isolated rural students, the states make special efforts to provide for them. In Montana, for example, a petition by the parents of three children begins the process for provision of a day school. In South Dakota, a petition by the parents of 15 eligible students mandates that a new day school be provided.

Can the government of the United States, which in Section 3 of the Indian Child Welfare Act declares "that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families," afford to do less?

Why is there an absence of day schools, especially on the Navajo Reservation? A century ago the answer would have been easy. The purpose of the first boarding school on the Navajo Reservation, as stated in its charter in the 1890s, was "to remove the Navajo child from the influence of his savage parents." The reports of BIA boarding school superintendents from around the turn of the century are replete with ethnocentric and paternalistic references to the children in their care, and the families from which they came. Throughout the early years of the Twentieth Century, boarding schools were ravaged by disease and epidemics. As late as 1930, the Senate of the United States received testimony on "kid catching" on the Navajo Reservation, when government officials were employed to go out into the back country with trucks and bring in the children, "often roped like cattle," and take them from the parents, many times never to return.

In 1928, the Meriam Report characterized the BIA's reliance on boarding schools as chief among those government practices that operate against the development of "wholesome" family life for Indian children and parents.

No federal official would dare come before the Congress or the American people today and offer such reasons for the continued reliance on a system that is the shame of this Nation. Instead, the BIA offers other rationales for the boarding schools.

One of these is the so-called "social welfare" argument. Indian, particularly Navajo, families are said to be so disrupted that boarding school is the best alternative. There is no evidence whatsoever to show that Navajo families are more disrupted than Sioux, Chippewa, or any other Indian families;

yet no other Indian tribe has so many children in the elementary grades boarded. Nor is there any evidence that Indian families are more disrupted--except by government policy--than non-Indian families. And if indeed there are Indian families having difficulty functioning, the Indian Child Welfare Act recognizes that they should have social services provided to them, not their children taken away.

Another argument one sometimes hears from the BIA on the Navajo Reservation is that Navajo families lack food and clothing with which to provide their youngsters. If this be the case, then do not Indian children and their parents deserve to have food and clothing brought to the children, not the children brought to the food and clothing?

The study the BIA commissioned under Title IV made much of the lack of an adequate road network on the Navajo Reservation. Yet Navajo children go to Head Start programs; why could not they go to elementary schools in their own communities? Navajo parents shop at grocery stores or trading posts at their chapters; if the parents can get to the store, why cannot the BIA bring the children to a local day school?

No matter what the truth of the road situation is, it remains true that we know much more about how to repair a damaged road than we know about repairing the psychological health of vulnerable young children subjected to removal from their families for no justifiable reason.

Bad weather is another factor sometimes mentioned by federal officials as a cause for the reliance on boarding schools. Here again the Bureau has been singularly deficient in exploring options to the institutionalization of children. In some non-Indian communities, schools have been closed during the worst part of the winter. If need be, children can stay at home. The school year itself can be adjusted so that children are able to spend the maximum time in the comfort of their families.

If weather conditions are so severe that children are unable to go home, emergency shelter could be provided in the schools, as it is being done by the Navajo parents at Black Mesa in the new day school being built there, or the children can be bunked overnight with nearby relatives.

Or does the BIA argue that weather conditions on the Navajo Reservation are unique in the U.S., making that the one area on the North American continent where day schools cannot be provided?

It used to be said that the small day school is no good educationally. This argument has largely been abandoned by the BIA since the late 1960s, but it does seem to persist in the subconscious of many BIA officials. Even today, a number of small Indian day schools operated by Indian tribes under contract with the BIA report continuing problems with the funding available to them under standard Bureau funding formulas.

Bureau officials sometimes point to the difficulty small rural schools are likely to have in retaining teachers. We wonder whether it could possibly be worse than the rate of teacher turn-over in the BIA boarding schools now.

In summary, even if it were conceivable that all of the educational aspects could be taken care of in the boarding school--and this is far from likely--it is still the emotional aspects of a child's development that cannot be taken care of by a matron, or even a dozen matrons, in the dormitory. This is thrown into even sharper relief when one considers the importance of the acquisition of culture and familial nurturing to the educational achievement of a child.

Over the last decade, Indian communities have demonstrated increasing and remarkable fortitude in attempting to get day schools opened. A few years ago, when the Alamo Navajo Community in New Mexico opened a community-controlled day school, the Navajo parents withdrew all their children from the Magdalena dormitory operated by the BIA in favor of placement in the new school. At the Black Mesa Navajo Community in Arizona, Navajo parents put together abandoned Atomic Energy Commission trailers to form a local day school facility rather than send their children to boarding school.

Today this Navajo community is looking forward to the construction of a new day school facility to serve all the children in the community. The school is being built for a cost of approximately $1 million.

In contrast to these hard-won gains by Indian communities, to the best knowledge of the Association on American Indian Affairs in the last 20 years no Navajo community has asked the BIA to close a local day school so that it could send its children to a distant boarding school.

A few years ago the U.S. Court of Appeals for the Tenth Circuit upheld a lower court decision that found the federal government guilty of negligence in its operation of the Chuska boarding school. The decision, which the United States did not appeal, upheld an award of nearly $1 million in damages to be put in a trust fund for three Navajo children, Allison Bryant, Johnnie High, and Marvin High. The children, at the time 7-, 8-, and 10-years-old, were awarded the money in compensation for the loss of their limbs due to frostbite and gangrene when they ran away from the boarding school and tried to make their way home to their families.

On the day they ran away, a severe snow storm hit the area, and the boys camped out on a mountainside from which they could see the lights of the boarding school, but did not return.

The United States attorney defending the BIA in this case, argued that the supervision that the BIA provided was prudent and that the government's efforts were focusing on making the boarding schools a more humane environment. If a child was going to run away, there was no way to prevent it. "You are virtually going to have to shackle them to their beds to prevent the problem," he said in his concluding argument to the court.

The BIA has said for years that the only option the Navajo parents have is the boarding school, that roads cost too much, that families are too disrupted, etc., ad nauseam. The BIA has never made it clear that day schools are an option for Indian parents, and that food and clothing can be brought to the families.

In short, the boarding schools have been studied to death. To do another study would be like that inglorious professor who lectures on navigation while the ship is sinking.

Only strong direction from the Congress can remedy the situation in a manner consistent with Indian tribal goals and humanitarian federal policy.

The sheer number of Indian children--and we again emphasize that thousands are aged ten and under--cries out for the attention of Congress. There are in 1984 more Indian children in government boarding schools than there were Cherokees force-marched to Oklahoma on the infamous and tragic Trail of Tears in the 1830s.

In the opinion of our Association, there is no worthier child welfare project that the Congress of the United States could authorize than a program to build day schools for all Indian children and families who need them.

The Association recommends that the Congress direct the BIA to develop and submit to it a Day School Implementation Plan to provide a sound basis for decisionmaking, funding, and other action to implement federal and tribal policy in a cost-effective and timely manner. The plan must reflect the standards and aspirations of the Navajos and other affected Indian communities, and be done in cooperation with them. The plan should provide for maximum participation by the local Indian community in the governance of their schools.

The Day School Implementation Plan should include:

1) Proposed location of all schools;
2) How and where existing facilities and roads might be utilized to serve more children better;
3) Where new facilities and/or roads are needed and desired;
4) The geographical area and approximate number of students that each school would serve;
5) Approximate busing distances and times;
6) A method of approximating costs regarding the construction of new, and the rehabilitation of existing, facilities and roads and the cost of busing;
7) An exposition of the arguments behind the decisions

made in preparing the plan;

8) A tabulation of changes necessary to achieve the conditions proposed in the plan, given the present situation as the starting condition;

9) A description of various alternatives for implementing the proposed plan;

10) An analysis of each alternative in terms of degree and type of change necessary over various timeframes; and

11) An analysis, in some detail, of the impact of the plan on selected local communities.

We recommend that such a plan be submitted first to the affected Indian tribes, and second to the Congress no later than one year from today. We further suggest that the Bureau include with the plan a detailed implementation timetable, over a suggested five-year period, and including recommended appropriations levels to build the necessary day schools.

II. JUVENILE JUSTICE

In 1983 the Association surveyed 150 public juvenile corrections facilities in 27 states to determine the extent of Indian juvenile incarceration. In addition, the Association reviewed government data available on Indian juvenile arrests.

The most recent government data available reports a total of 25,612 Indian juvenile arrests in 1979.

The composite profile of the Indian juvenile arrested which emerges from the data and our survey is of a 15-17 year old male arrested for an alcohol-related victimless offense. He appears before a state juvenile court judge or tribal judge. Generally, there is no program available in the community to address his specific needs and the person is released with no services provided.

Our survey of Indian juvenile incarceration is based on available data involving a sample of 50,000 residents in public juvenile corrections facilities in 1982. Indian juveniles constituted 3.4 percent of the juveniles in those facilities. On a per capita basis, Indian youth in the 27 states surveyed were incarcerated at three times the rate for non-Indian juveniles.

Every tribal social worker and program administrator surveyed stated that Indian juvenile delinquency is a problem of great concern to the tribes. Every social worker commented on the absence of legal authority to intervene in state juvenile court proceedings and stated that the lack of resources and remedial services for Indian youth and their families inhibits tribes from actively working on such cases even where the state juvenile justice system is willing to cooperate. Some commentators indicated that the states were at times all too willing to offer such cases of Indian juvenile delinquents to tribal courts and agencies.

The Association believes that the large numbers of Indian juveniles arrested and their disproportionate placement in public juvenile corrections facilities require Congressional oversight and investigation. The Bureau of Indian Affairs and the Office of Juvenile Justice and Delinquency Prevention should be directed to provide the Congress with a report by January 31, 1985 addressing the following areas:

1) The nature and scope of Indian juvenile arrest and incarceration with recommendations to address the needs identified;
2) Whether current justice systems operate in a discriminatory manner against Indian juveniles:
    a. whether arrest and conviction rates for Indian juveniles are higher than rates for non-Indians and if so, why?;

   b. whether Indian juveniles are sentenced to longer terms than non-Indian juveniles and if so, why?; and
   c. whether Indian juveniles remain on probation and parole for longer periods than non-Indian juveniles and if so, why?

3. The extent to which current BIA and Department of Justice programs serve Indian tribes and communities in their attempt to address needs for juvenile justice and delinquency prevention programs and facilities, and whether current programs are adequate.

III. FUNDING UNDER TITLE II AND TECHNICAL AMENDMENTS

In 1983 the Association surveyed social workers, attorneys, judges and administrators in child-welfare programs on twenty-five Indian reservations, and in selected communities throughout the country. Comments from those surveyed can be summarized as follows:

1) Virtually every social worker and program director complained of inadequate funding. The purposes for which additional funding is needed are:
    a. foster care
    b. services to meet the actual needs of families
    c. training for staff
    d. training for tribal judges
    e. pre-adoptive placements
    f. special needs of handicapped children
    g. staffing
    h. enforcement of the Act and monitoring of performance by the states
    i. dissemination of information
    j. training for state social services personnel

k. training for state judges

l. intervention

m. legal assistance for tribes in child custody proceedings

2. The comment second highest in incidence concerned complaints about late notices, the possibility that notices are not being sent, and the routine failure of certain states to send notices.

3. A number of those surveyed commented on the lack of familiarity with the Act on the part of state judges and/or attorneys.

While it is apparent that the Act has resulted in the funding of numerous tribal and urban Indian child and family service programs providing critical services that, with few exceptions, were not previously available to Indian families and communities, it is also apparent that funding under the Act continues to fall short of Indian needs.

The Association expects that this Committee will receive at these hearings testimony from many Indian child welfare programs concerning their funding needs under the Act. In regard to funding, the Association only wishes to make the following comments:

The Indian Child Welfare Act was passed in response to

Congressional concern about the national tragedy of widespread unwarranted placement of Indian children. To the best of our knowledge, since the Act's passage, the BIA has never reported to Congress on the adequacy of funding levels to meet the needs perceived by Indian tribes and communities.

We suggest that this Committee require the Bureau to report to it on the unmet needs among reservation and off-reservation Indian communities for adequate child welfare services. This report should be done in cooperation with the affected tribes and communities, and provide on a reservation-by-reservation basis (or for each urban Indian community) the actual Indian child welfare need. We believe a report such as this will help the Congress evaluate whether the funding requested by the Administration under Title II is adequate to address Indian child welfare concerns.

Experience with the Act during the past several years has revealed a need for certain technical or clarifying amendments. Technical amendments drafted by the Association for the Committee's consideration follow, with explanations of why we believe them to be necessary.

TECHNICAL AMENDMENTS

Key: Present language
Additions
~~Deletions~~

SECTION 3

Amendment

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and for the placement of ~~such~~ Indian children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Explanation

The Act was intended to prevent the removal of Indian children from Indian families and to prevent the breakup of Indian families. Several courts have narrowly interpreted the Act to render the Act inapplicable to circumstances where an Indian child, not in the custody of an Indian parent, was the subject of a child custody proceeding. The amendment would clarify that the Act applies to the placement of all Indian children, both those in the custody of their parents or Indian families at the time of a placement proceeding and those who are not.

SECTION 4 (1) (i)

Amendment

"foster care placement" which shall mean any administrative, adjudicatory or dispositional action, including an action under Section 103 of this Act, ~~removing~~ which may result in the temporary placement of an Indian child ~~from-its-parent-or-Indian-custodian-for-temporary-placement~~ in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have custody of the child ~~returned~~ upon demand, but where parental rights have not been terminated.

Explanation

Indian child custody proceedings arise in different legal contexts depending on state law. Some states have separate administrative, adjudicatory and dispositional proceedings while other states combine one or more of these proceedings. The Act has been construed in some jurisdictions to cover adjudicatory proceedings involved in the custody of Indian children and not administrative and dispositional proceedings. The amendment clarifies that each of these proceedings are included within the coverage of the Act. The words "removing" and "returned" are proposed for deletion for the reasons stated in explanation of the amendment to Section 3. The Section also is amended to state explicitly that voluntary placements under Section 103 are included within the definition of "child custody proceeding." Some courts have ruled to the contrary.

SECTION 4 (1) (ii)

Amendment

"termination of parental rights" which shall mean any adjudicatory or dispositional action, including an action under Section 103 of this Act, which may result~~ing~~ in the termination of the parent-child relationship.

Explanation

See explanation for Section 4 (1) (i).

SECTION 4 (1) (iv)

Amendment

"adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any adjudicatory or dispositional action or any voluntary consent to adoption under Section 103 of this Act which may result~~ing~~ in a final decree of adoption.

Explanation

See explanation for Section 3 (1) (i).

SECTION 4 (1) (last paragraph)

Amendment

Such term or terms shall include the placement of Indian children from birth to the age of majority, including Indian children born out of wedlock. Such term or terms shall not include a placement based upon an act which, if committed by an adult would be deemed a crime or upon an award of custody ~~in-a-divorce-proceeding~~ to one of the parents in any proceeding involving a custody contest between the parents.

Explanation

As discussed under Section 3, the Act has been held in some jurisdictions not to apply to Indian children who at the time of birth are not in the physical custody of an Indian parent or Indian family. The proposed amendment would clarify that the Act is applicable in such circumstances.

The Act is also not applicable to divorce proceedings where a parent will receive custody of a child. Unmarried parents, or those asking for separations or annulments, may also contest the custody of their children in court. The Association believes that the intent of the Act was to eliminate from its coverage any proceeding involving a custody contest between parents where a parent will be awarded custody. The amendment proposed expresses this intent.

SECTION 4 (3)

Amendment

"Indian" means any person who is a member of an Indian tribe, ~~or-who-is an-Alaska-Native-and-a-member-of-a-regional-corporation-as-defined-in Section-7~~, including an Alaska Native who is a member of any Alaska Native village as defined in Section 3 (c) of the Alaska Native Land Claims Settlement Act (85 Stat. 688, 689) or, for purposes of Section 107, any person who is seeking to determine eligibility for tribal membership.

Explanation

The definition of "Indian" in the Act has the effect of not including Alaska Natives who were born after the date of enactment of the Alaska Native Land Claims Settlement Act (December 18, 1971). The amendment would include such persons within the coverage of the Act. Also, Section 107 applies to persons who by definition cannot yet establish a right to tribal membership. The proposed amendment clarifies the applicability of the definition to such persons.

SECTION 4 (5)

"Indian child's tribe" means (a) the Indian tribe in which the Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe ~~with~~ which, ~~the-Indian-child-has-the-more significant-contacts~~ after notice and an opportunity to be heard, is determined to have the more significant contacts with the Indian child.

Explanation

Implicit in the definition of "Indian child's tribe" is a requirement that where an Indian child is a member of or eligible for membership in more than one tribe, a hearing be held to determine which tribe has the more significant contacts with the child. The amendment would make the requirement for such a hearing explicit.

SECTION 102(a)

Amendment

In any involuntary child custody proceeding in a State court, where the court or the petitioner knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No involuntary child custody ~~foster care-placement-or-termination-of-parental-rights~~ proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or until at least twenty-five days after receipt of notice by the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

Explanation

Involuntary foster care placements and terminations of parental rights occur under the laws of some states in the context of an adoption proceeding. The amendment, consistent with the intent of the Congress to cover all involuntary foster care and termination of parental rights proceedings, would recognize this circumstance. In addition it is proposed that the section be amended to require a petitioner who knows or has reason to know that an Indian child is involved to provide the requisite notice. Under state law courts generally are not responsible for providing notice; petitioners are. It is more likely for information on the Indian identity of a child to be available to a petitioner than to a court. Finally the section as enacted allows a child custody proceeding to be held five days prior to the time within which the Secretary is authorized to provide notice to the parent, Indian custodian and the tribe. This is clearly a drafting error. The Association proposes an amendment that would prohibit such a proceeding from being held until at least ten days after the Secretary's time for providing notice expires.

SECTION 102(c)

Amendment

Each party ~~to-a-foster-care-placement-or-termination-of-parental-rights~~ in any involuntary child custody proceeding under State law involving an Indian child shall have the right to examine and copy all reports or other documents filed with the court upon which any decision with respect to such action may be based.

Explanation

In conformity with the amendment proposed for section 102(a) an amendment is proposed to clarify that the section covers adoption proceedings that encompass foster care placements and termination of parental rights. Also the section is amended to make clear that the parties have a right not only to examine but to copy documents upon which a decision may be based. Some courts and agencies have narrowly construed this provision to permit examination and not copying.

SECTION 102(d)

Amendment

Any party seeking to effect a foster care or adoptive placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts, including wherever possible the involvement of an Indian child and family service program, have been made to provide remedial....

Explanation

For the reasons stated in the explanation to section 102(a), the amendment would add adoptive placements to the coverage of the section. In addition, an amendment is proposed that would state that "active efforts" should include utilization of Indian children and family service programs. Such an amendment is consistent with the intent of the section and conforms to Section D.2. of the BIA's guidelines for state courts.

SECTIONS 102(e) and (f)

Amendments

Each section should be amended to delete the word "continued."

Explanation

There have been many circumstances where Indian parents were involved in child custody proceedings at a time when they did not have custody of the child or children involved. In some jurisdictions the language of the Act has been literally construed to render these sections virtually inapplicable in such circumstances. It is apparent that the Congress intended to extend the procedural safeguards of these sections to all Indian parents who could be temporarily or permanently deprived of custody, or of an opportunity to have custody, regardless of whether, at the time of the proceeding, the parent had actual physical custody.

SECTION 103(a)

Amendment

Where any parent or Indian custodian who is not domiciled or resident within the reservation of the Indian child's tribe voluntarily consents to a foster care placement, ~~or~~ termination of parental rights, or adoption under state law, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid. The Secretary of Health and Human Services is directed to require that Indian Health Services employees not obtain any such consent prior to the expiration of ten days after the birth of an Indian child. The Secretary of Health and Human Services shall provide each parent with a written statement informing him or her that such consent may not be validly given until at least ten days after the birth of an Indian child and that at no time shall a refusal to provide such consent result in any loss of rights to custody or a denial of any services provided by the Indian Health Service.

Explanation

The amendment to the section would clarify, consistent with the United States Supreme Court decision in *Fisher* v. *District Court*, 424 U.S. 382 (1976), and the intent of Congress, that state courts do not have jurisdiction over voluntary consents given by persons who are reservation residents or domiciliaries. Also, section 103(c) includes voluntary consents to adoption while section 103(a) omits any reference to such consents. An amendment is proposed that would clarify the intent of Congress to include voluntary consents to adoption.

The section is also amended to protect the rights of Indian parents who are recipients of the services of the Indian Health Service at the time of the birth of an Indian child. Many Indian children are born in IHS facilities and IHS employees have reportedly been involved in activities resulting in voluntary consents that are not in compliance with section 103(a). Prior to the Act IHS medical and other staff were often involved in practices that led to unwarranted placements of Indian children. Although circumscribed by the provisions of the Act, these practices have not ended and an explicit statutory directive to IHS may be necessary in order to assure that the intent of Congress is followed without exception.

SECTION 106(a)

Amendment

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, the party seeking to place the child, in accordance with the provisions of section 102(a) of this Act, shall notify the biological parent or prior Indian custodian and the Indian child's tribe of the pending placement proceedings and of their right of intervention~~,~~ ~~a~~. A biological parent or prior Indian custodian may petition for, and shall be notified of the right to petition for, return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of Section 102 of this Act, that such return of custody is not in the best interests of the child.

Explanation

Section 106(a) authorizes the restoration of parental rights under certain circumstances while not requiring notice to biological parents that would enable them to exercise the rights granted. Such notice is implicit in the section. The proposed amendment would make such a notice requirement explicit.

SECTION 107

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree, through court records or records subject to subpoena or other court order, shall inform such individual....

Explanation

Section 107 authorizes adult Indians who have been adopted to petition for access to certain adoption record information. Often the information, required by the section to be provided, is not part of court records but is part of agency or attorney records. Since enactment many Indian adoptees have been frustrated in their efforts to secure tribal membership as a result of this problem. The amendment would make it clear that where court records are insufficient to enable a court to assist an Indian adoptee to secure the rights contemplated by Section 107, the court is required to seek the necessary information from agency and other records that may be subject to court order.

SECTION 201(a)

Amendment

....Such child and family service programs, in accordance with priorities established by the tribe, may include, but are not limited to....

(a)(8)

guidance, legal representation, and advice to Indian families and tribes involved in tribal, State, or Federal child custody proceedings.

Explanation

Although section 201(a) clearly states that the programs funded "are not limited to" the eight identified categories and although the section is clearly intended to permit tribes to establish their own service priorities, the Bureau of Indian Affairs has frequently interpreted the section as authorizing funds for programs limited to the enumerated categories. Programs that have attempted to spend Title II money to pay for legal representation of the tribe in a child custody proceeding have not been able to do so. The BIA has also imposed its own priorities on tribes. It is our understanding that grant applications that did not seek funds for Bureau priorities were denied. The amendment would assure that the intent of the Congress to expand tribal opportunities and resources for child and family services is properly carried out by the Bureau.

SECTION 201(b)

Amendment

....For purposes of qualifying for assistance under a federally-assisted program, placement in, or licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to placement, licensing, or approval by a State.

Explanation

It was the purpose of this provision to make Indian tribal foster and adoptive homes eligible for funds appropriated for adoptive and foster care under the Social Security Act. In some jurisdictions this purpose has not been recognized because the section did not clearly state that children placed by tribes in foster or adoptive homes are to be treated equivalently to children placed by a state in foster. or adoptive homes. The amendment would clarify this matter.

SECTION 301(b)

Amendment

Upon the request of the adopted Indian child over the age of 18, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the ~~enrollment-of-an~~ Indian child to secure membership in the tribe in which the child may be eligible for ~~enrollment~~ membership or for determining any rights or benefits associated with that membership.

Explanation

Many Indian tribes do not define membership in terms of enrollment. This has been recognized in the definition of "Indian child's tribe" in section 4(5) of the Act. The proposed amendment would recognize this fact.

The Association, based on its review of experience with the Act during the past five years, also believes that the Congress should consider certain substantive amendments in order to assure that the Act's purposes and intent are adhered to by agencies and courts. We will submit proposed substantive amendments for inclusion in the record of this hearing.

SUMMARY OF SELECTED PROVISIONS
OF NINE STATE EDUCATION STATUTES

STATE	DEFINITION SCHOOLS	NEW SCHOOL PREREQUISITES	DECISION MAKING AUTHORITY RE: SCHOOL OPENINGS
New Mexico	Elementary: K-8, unless junior high school established	No specific provisions; Considerations from Public School Finance Act and School Construction: Need for school, number of students to be served, other schools within five mile radius, financial ability of school district to support new school, & whether an unreasonable proliferation of schools will result.	School boards (✓), Director of school finance (x).
Nevada	Elementary: K-8	Necessary and reasonable.	School board (✓), Superindentent of public institution (x).
Arizona	High school: 8 or 9 - 12 Intermediate: 7 - 8 or 9 Elementary: K - 7 or 8	Re: High school - 200 or more students and not less than 2 million in assessed valuation in district.	Re: High school - Petition and vote of majority of electorate in school district (x); Re: Intermediate school- School Board (✓), County School Superintendent (x).

Notes: ✓ - Recommendation authority
x - Binding authority
Only South Dakota has a provision where under certain circumstances, by law, a new school is required to be established; all other states vest decision-making authority in one or more entities.

STATE	DEFINITION OF SCHOOLS	NEW SCHOOL PREREQUISITES	DECISION MAKING AUTHORITY RE: SCHOOL OPENINGS
South Dakota	K - 8	Discretionary. Re: Isolated areas - 15 or more students residing 24 miles from nearest school, all of whom reside within 1 mile of each other upon provision of a suitable building.	School board (x), Voter majority (x). Re: Isolated areas - Petition by parents of 15 eligible students (x).
Montana	K - 6 (If junior high exists) K - 8	Re: Elementary - General need and five or more students Re: Junior high - discretionary Re: High school - discretionary Isolated school: Elementary - 10 or more; High school - 25 or more. Relevant factors - general need; student population, distance and road conditions to nearest school (weighted extra for isolated schools), taxable value in district.	Petition by parents of 3 children (✓), School Board (✓), County Superintendent (✓), Board of County Commissioners (✓) Superintendent of Public Instruction (x).
North Dakota	K - 6, K - 8 K - 7, K - 9	Requisite and expedient.	School Board (x).

STATE	DEFINITION OF SCHOOLS	NEW SCHOOL PREREQUISITES	DECISION MAKING AUTHORITY RE: SCHOOL OPENINGS
Utah	Common schools are comprised of "primary and grammar" grades, which in turn are nowhere identified.	Discretionary Re: Voter petitions - 1,200 minimum students in the district for new high schools; no part of requesting precinct is within 5 miles of established high school, no high school is within 12 miles of proposed school.	All schools: School Board (x), and High schools: Majority of district voters (x).
Oklahoma	K - 6 or K - 8	Discretionary	School Board (x)
Mississippi	Local school board discretion	Discretionary but must avoid unnecessary duplications	School Board (x)

Senator **Andrews**. Our next witness is Evelyn Blanchard, president of the Association of American Indian and Alaska Native Social Workers. Welcome to the committee, Ms. Blanchard.

STATEMENT OF EVELYN BLANCHARD, PRESIDENT, ASSOCIATION OF AMERICAN INDIAN AND ALASKA NATIVE SOCIAL WORKERS; ACCOMPANIED BY LINDA AMELIA, DIRECTOR, COMANCHE FOSTER CARE REVIEW BOARD; AND ETHEL KREPPS, DIRECTOR, INDIAN CHILD WELFARE PROGRAM OF THE NATIVE AMERICAN COALITION OF TULSA

Ms. **Blanchard**. My name is Evelyn Blanchard, and I am president of the Association of American Indian and Alaska Native Social Workers. We want to express immediately our deep gratitude for this opportunity.

Our discussion will be handled in three sections. We will present a conceptual perspective of the developmental issues in Indian Child Welfare Act programming, and we will also highlight some problem areas and present some recommendations regarding approaches to funding and also some substantive amendments to the Indian Child Welfare Act.

On my left is Linda Amelia, director of the Comanche Foster Care Review Board and consultant with the Comanche Tribe's children court and child welfare program. Linda will provide discussion about one tribe's efforts to coordinate the services necessary to carry out the mandate of the law. On my right is Ethel Krepps, attorney and director of the Indian Child Welfare Program of the Native American Coalition of Tulsa. Ethel will address the legal issues and concerns that have surfaced during the implementation period thus far.

Senator **Andrews**. Evelyn, before you proceed, let me make a brief statement. I had anticipated another member of the committee would be here. I was supposed to be addressing the State experiment station directors at 11:30. So, I have to leave. Because I realize you have come a great distance, I do not want to hold you up over an hour or so. Until another Senator arrives, I am going to ask our staff director to continue the hearing so that we can make our record with a minimum amount of inconvenience to you.

Ms. **Blanchard**. Thank you.

The association proposes a funding level for Indian Child Welfare Act programs of $29.5 million. This figure is based on data we received from our recent survey of tribes and Indian organizations, which indicated a minimum needed amount of about $53,000. A further question was posed to them. What particular service would you add or expand if you had more money, and that amount averaged out to $23,000. From the addition of those two figures times 400, we reached the $29.5 million.

We would also like to call to your attention that the Bureau of Indian Affairs customarily and routinely receives requests for Indian Child Welfare Act funding in the amount of $25 million yearly. In addition to that, we would ask you to recall that the Congressional Budget Office in 1978 proposed a funding level of $125 million over a 5-year period. So we believe that our recommendation is well in line with the need that has exhibited itself thus far.

We would also recommend that the funding period for Indian Child Welfare Act programs be extended to 3 years and that within the first year of the 3-year period, the Bureau of Indian Affairs and the Department of Health and Human Services be required to meet its responsibility clearly set out in 1978 to identify the fiscal resources available to these programs. In the examination of moneys available to these programs, we are asking that these departments identify discretionary funds also. At the present time, the methods of funding are so lopsided and fragmented, it is very difficult to gather the kind of information that is needed to ensure that the services we are providing are the ones that are necessary and are constructed in a way to ensure that Indian families will not be destroyed.

In that connection, we have very important needs in the area of knowledge development, regarding Indian social work practice and theory. These particular issues are, frankly, in our opinion, being neglected by both departments. There are studies going, and there are projects being funded, but the information and knowledge that is being developed by these various efforts is not being shared with the Indian community. As an example, we recently had access to an analysis of a 1977 study conducted by the Children's Bureau, entitled the "National Study of Social Services for Children and Families."

That study revealed that older Indian children were twice as likely to be in care because of neglect than any other racial group. About 10 percent of the Indian children in care have no formal service agreement. The service agreements for all minority children tended to emphasize aspects of service such as mental health, family functioning, and modification of child behaviors. Less than 10 percent had goals relating to financial, or household management, or reduced social isolation. Overall, only half of the families of minority children had services recommended, but Indian children had the fewest. How, you can readily see that if this kind of information is not shared with the tribes and Indians organizations, there is absolutely no chance to compare approach to correction of behavior. So we are being denied information that is absolutely necessary for the development of these programs.

Our survey also revealed that the Indian Child Welfare Act programs—and I believe that the bureau in its statements just a few minutes ago confirmed this—are in a sense becoming the social services programs for Indian country. The programs have moved to fill the void in services that were identified in 1978 at the time of the passage of the act. We found that 66 percent of the Indian Child Welfare Act programs, for example, are conducting child-protective investigations. Now, this is a legal responsibility of the State, and we are encouraged that we have the opportunity to do this and do not want to return this privilege.

However, in connection with this, we must look at some amendment to the definition of child custody proceeding under the act, because the character of the service has undergone a change. Also with regard to services taken over by Indian Child Welfare Act programs, we found that for the reporting period for grant period fiscal year 1983, of those programs that reported, 523 cases had been taken over by Indian Child Welfare Act programs from counties and States, and these Indian programs were providing full service to these Indian clients.

The services that they most frequently provided are, (1) counseling and therapy for families, parents, and children; (2) outreach, investigations, consultation, home visits, and follow-up; (3) foster care and adoption work, which includes studies, placement, and recruitment; and (4) client advocacy, involving identification of resources, education, and legal assistance.

We call to your attention that very few Indian programs are operating under contracts or agreements with States and counties, where reimbursement for the services being provided is received. We are not aware that these services being provided are being captured in reports to the Bureau from tribes and Indian organizations.

That leads us to a very serious problem in the implementation of the Indian Child Welfare Act, and that is the failure of the Bureau of Indian Affairs to set in place adequate reporting mechanisms. We found in the survey that we did that there is no rhyme or reason about why a particular Indian Child Welfare Act program would select the individual as the case-reporting unit as opposed to the family as the case-reporting unit, as opposed to another group of other as the case-reporting unit. These problems in reporting are extremely serious, and the Bureau makes a number of efforts and continuing efforts to collect data, but none of these Bureau efforts are being brought forward to the tribes and Indian programs so that they have an opportunity to look at them to see how we can establish a fit and eventually develop a system that responds to universal information needs.

The other area that we would like to address is that of training. Training has been completely neglected. We are very concerned about this because those of us who are trained in the formal western schools know the very great differences between theoretical constructs in personality development, and so forth, that exist between the western thought and Indian thought. There is absolutely no leadership being provided the Indian tribes and Indian organizations in this connection.

We heard of various discretionary efforts that are being made, but none of this is being coordinated in a way that will assure us the development of a theoretical base for practice. I will conclude my remarks here and ask that Ethel continue with our concerns.

[The prepared statement follows:]

Testimony of the

Association of American Indian and Alaska Native Social Workers

Indian Child Welfare Act Oversight Hearings

April 25, 1984

My name is Evelyn Lance Blanchard and I am president of the Association of American Indian and Alaska Native Social Workers. The Association joins all Indian people in its expression of gratitude for the opportunity that the Select Committee on Indian Affairs has made available to us to explain our need, and to participate in a design for the use of our national resources to secure the healthy development of humankind's first and most important resource, the children.

Based on response to the Association's recent survey of tribes and Indian organizations we propose a funding level for Indian Child Welfare Act Title II programs of $29.5m. The population of our survey included all tribes and Indian organizations. From this population, the Association received 93 completed surveys. This is broken down to 58 responses from programs that had received funding and 35 programs that had never received funding. The services which these programs are providing represent classical child welfare services programs and divisions. Our survey presented two leading questions which will serve as the basis for interpretation of the data received.

1. What do you consider the two most successful services your program provides? The response reveals the following listing.
    a. Counseling for families, parents and children
    b. Foster care development and placements
    c. Licensing of foster homes
    d. Legal services
    e. Education of groups which includes clients, agencies and staff
    f. Advocacy which includes outreach, education regarding benefits and the receipt of those benefits
2. What do you consider the two least successful services your program provides?
    a. foster care licensing
    b. Drugs and alcohol
    c. Counseling
    d. Foster home placements
    e. Mental health services
    f. Coordination

As you readily see these responses represent two sides of the coin and are descriptive of the varied program components based on differing developmental levels. We are knowledgeable of some of the ingredients of this profile and intend to pursue further study. Direct counseling services are the most successful ingredients of the programs. These counseling services provide the necessary one-to-one contact where the opportunity for the greatest clarity is presented. This experience lets the clients have an opportunity to directly address and interpret their distress and strength. It is these ingredients that social workers must have to translate the presenting problem into an assessment or diagnosis and thus form the basis for the treatment method or approach. It appears that the programs have a good hold on this phase of the process. Importantly these responses indicate that the workers have been able to establish the requisite relationship to develop a good working environment. Without this characteristic base it is impossible to encourage and accomplishment correction of behaviors that contribute to the breakup of Indian families.

In line with this experience we further propose that beginning in FY 85 that the grant period be extended to three years and that a number of programs be targeted for special study. We are experiencing great difficulty in our attempts to describe successful efforts and are faced with powerful reports that assess accomplishment and compliance by the Office of the Inspector General. In our opinion the unfavorable tone of reports like these result from the failure of the Bureau of Indian Affairs to meet its mandate to assist the tribes and Indian organizations in the implementation of the Act. In this connection we are confused that there has not been a national effort under Bureau leadership to develop adequate reporting systems. Reporting systems are primal ingredients in our budget process. A national reporting system to measure the capability of Title II programs does not exist. The problems created for Congress and the Administration can be seen immediately.

The Bureau's Branch of social services performs two periodic surveys. One is the unduplicated case count that reflects separation in state and federal responsibility for various catagories of assistance and service. The other is concerned with jurisdictional status of Indian Children. These reports give the Bureau a guage of the direct federal financing needed. The Bureau has not brought these reports forward to the tribes and Indian organizations for examination as to how universal information needs can be met. It is impossible to understand how the Bureau is able to translate the operations of the Title II programs to the Administration and Congress when basic reporting mechanisms have not been developed. Upon entry into office the Administration determined to eliminate the Title II programs because they were inadequately funded to perform. In view of the responsibility that was thrust upon tribal governments we agree with the Administration's position that funding is inadequate. However we contest its position that the programs are not adequately performing. In FY 82 the Cheyenne-Arapahoe programs returned 71 children to their families and people. In the same period the Burns-Paiute and Metlakatla communities did not place any children outside their families. What are the specific ingredients of effort that have made this possible? Unfortunately, focus to determine the characteristic knowledge and technique of these success is absent in the Bureau's activities.

The lack of adequate reporting systems together with on again, off again funding patterns directly undermine the developmental efforts of tribal and Indian organization programs and severely curtail our opportunity to develop a stable knowledge base of Indian social services practice and theory. Unless we are given the opportunity to develop a truly disciplined approach the Congress and every Administration will always be faced with emergency situations that are costly to fund and inadequate means to address and understand the causes of family breakup in these communities. The difficulties that we face in funding and programming contribute directly to the cycles of inefficiency and inappropriate use of resources that are of concern to all of us.

We further recommend that during the first year of the proposed three year funding period that the Bureau of Indian Affairs and the Department of Health and Human Services identify and coordinate the funding resources available to garner by the second year a funding level of $29.5m. Attention should be given to resources from Title II, Title IVB, Title IVE, Title XX and P.L. 93-638 social services conqracts. In addition to the implementation of these resources and identification of all discretionary monies available for understanding and resolution of problems should also be presented. These efforts are necessary to clearly identify the national resources to meet our needs and at the same time set up a process to distinguish continuing need from discretionary efforts. Presently funding for these programs is being approached on a project basis and there is inadequate recognition of the real problems involved.

For example, information regarding Bureau of Indian Affairs placements for the period of August 1983 reveal the following levels.

State	Foster Homes	Special Homes	Institutional Needs	Total # in care
Arizona	300	3	210	513
Montana	264	16	24	304
South Dakota	171	38	26	235
North Dakota	187	7	9	203
New Mexico	82	1	62	145
Mississippi	102	4	2	108
Colorado	73	0	23	96
Wyoming	37	0	4	41
Minnesota	8	1	5	14
North Carolina	2	0	9	11
Wisconsin	1	0	9	10
Nevada	9	0	1	10
Oklahoma	8	1	1	10
California	8	0	0	8
TOTAL	1252	71	385	1708

The information presented to you has not been made available to the tribal and Indian organization programs in spite of the continuing high rates of out of home placements being supported by the Bureau. Unless there is a direct move on the part of the Bureau to share information like this with the programs it will be impossible for the overall Title II effort to set targets and measure accomplishments. Failure to share information and develop integrated targets can result in a situation similar to that in which the Community Health Representative program finds itself. These matters are clearly tied to accountability and we are only asking for trouble if these serious problems in reporting are not addressed immediately.

Little analysis, if any, of the characteristics of Indian children in care is being done by the Bureau. It is a well accepted fact that problems experienced in childhood are likely to continue into adulthood if appropriate attention is not given. We have recently had access to analysis of a 1977 Children's Bureau survey entitled National Study of Social Services to Children and Their Families.

The study found that only about 1% of the children receiving services were Indian or Alaska Native. The analysis included 5,600 Indian children in out of home care. They had an average age of 12 years. Those aged under 5 had been in care an average of 14.1 months; those 6 to 11, 50 months; and those 12 to 18, 72.8 months. This length of time in foster care was much longer than for white children of the same ages. Older Indian children were tweice as likely to be in care because of neglect than any other racial group, and nearly half of the adolescents were in care for that reason. About 10% had no formal service agreement on file and this was somewhat better than was true of other minority children. Service goals for all minority groups tended to emphasize clinical aspects of service: mental health, family functioning and modification of child behaviors. Less than 10% had goals relating to financial or household management or reduced social isolation. Overall, only half of the families of minority children had any services recommended, but Indian children had the fewest. This study came on the heels of the survey of the Association on American Indian Affairs which revealed that one out of every four Indian children was not living with his or her own family and 85% of these children were in non-Indian placements. The Children's Bureau highlighted the critical need to improve service planning for Indian children. This information has not been presented to the tribes and Indian organizations by the Bureau and they are therefore unprepared to address the very complex problems that will be faced for years to come and which impact directly on the funds that will be needed to fund Indian Child Welfare Act efforts. The project attitude maintained by the Bureau sets up immensely complicated barriers to good planning.

Since the passage of the Act and with the funding made available the Indian programs have moved to fill the void in service planning. Our survey revealed that 66% of the programs are conducting child protective investigations. This is highly significant because it means that the county and state workers recognize the developing resources in the Indian communities and are making use of them. In addition to these 610 protective service investigations the Indian programs have taken over 523 cases from counties and states and these Indian programs are providing full services to the extent they are able. This shift of responsibility is further supported by the fact that 78% of the programs reporting provide residual services to Indian clients on a continuing basis. The services most frequently provided are:

1. counseling and therapy for families, parents and children
2. outreach, investigations, consultation, home visits and follow up
3. foster care and adoption work which includes studies, placement and recruitment
4. client advocacy involving identification of resources, education and legal assistance.

Very few Indian programs are operating under contracts or agreements with states and counties where reimbursement for the services being provided is received. We are not aware that these services being provided are being captured in reports to the Bureau from tribes and Indian organizations. There is serious concern that Congress and the Administration are being given insufficient information on which to base their decisions. It must be recognized that Indian Child Welfare Act programs have become in a very short time the primary social service program available to Indians. Voids in service from primary programs of counties and states are being filled by Title II programs and it is difficult to see how this trend can be reversed. It is imperative that a realistic look be taken at what is occuring and that appropriate resources be brought to bear on the problem.

Another area of implementation which is being neglected concerns training. It is well recognized in the field of social work that different peoples bring variable interpretations and resources to therapy. In spite of this there has not been a national effort to examine the theoretical base of Indian social work practice. This is especially curcial because many tribes and organizations are required to hire workers at the master's level for program directorships. Many tribes do not have local personnel with these credentials and are forced to hire non-Indian personnel for these positions. This presents problems because the non-Indian personnel do not know the community and its people and are therefore handicapped in their ability to make full use of the resources available. The pattern that has developed is that these workers become frustrated and overwhelmed with their responsibilities and usually leave after a year of employment which frequently coincides with the absence of continued funding. While these individuals have been in charge they have retained broad activity to themselves. It is the unusual case when these non-Indian workers have brought their staff into important decision making roles. These practices have consistently limited the ability of these programs to develop. As a consequency many Title II programs must begin development at each new funding period. This is inexcuseable and encourages ineffective use of resources athat are badly needed. Lack of leadership in this are inhibits the right of self-determination. It is impossible to be self-determining when the manner in which one can best proceed is confused and obscured. These are serious developmental concerns that will not go away. The limited training that has been abailable has been funded through the Administration for Native Americans and has been concentrated on the development of tribal-state agreements and compliance with the Adoption Assistance Act. Through the years Bureau funds have been made available for training of tribal court judges but again it has not been comprehensive in scope and social services staff have not had the opportunity to participate in the design and have had very limited participation as students. It must be called to your attention that we are dealing with some of the most intimate aspects of life and the approach must be knowledgeable and judicious.

There is general neglect regarding the resources needed by tribes and Indian organizations and efforts to develop these resources. Thirty two percent of the funded programs reporting indicated that they are buying services needed by their clients. At the top of the list of these services are psychological therapy and legal services. Lack of resources in these areas are reflected in state courts' decision not to transfer cases to tribal courts. The four most frequently cited reasons for a decision not to transfer are:

1. the state court lacked confidence that the tribe would be able to handle the matter
2. improper notice procedures
3 the state court's refusal to recognize an Indian child's eligibility for enrollment
4. lack of legal assistance.

In the main, many Indian workers lack the sophistication to deal with these complex legal matters. There is no evidence that the Bureau is addressing these very serious problems. Improper procedure in these matters can result in an Indian child being separated from his or her family and tribe forever. In this instance the Bureau is failing in its responsibility to implement the Act.

The programs were asked to respond to the question: What one service would you add or which existing service would you expand if you had more money? The three most frequently cited services were training, expansion of services and legal services. These are not hidden needs.

We strongly urge that attention be given to the establishment and support of tribal children's courts. Tribes are encouraged to develop children's codes but the judicial systems to handle complicated matters of children's law are not being given sufficient attention. In many of the efforts related to implementation of the Act there is a facade quality. Tribes are being encouraged to establish the mechanism but the assistance to develop the essential underpinning is absent.

The soft approach of the Bureau related to guidelines to state courts is causing serious problems in the notification process. Our survey revealed that the programs had learned about 243 cases involving Indian children through other means than notices from state courts. Several recommendations were put forward by the programs to correct this problem of which the most prominent were:
1. education of social service agency staff and court staff
2. enforcement of compliance by amending the Act to impose a penalty for non-compliance
3. expansion and improvement of state-county-tribal agreements
4. improved procedures to identify Indian children upon initial contact.

Independent adoptive placements and placements by private agencies continue to present serious problems. There is considerable variation among states regarding the time at which an adoption is filed. Indian children may have been in the custody of the adoption petitioners for a considerable length of time before a petition is filed. State courts in general are reluctant to remove a child from a family with whom he or she has been living for any length of time. It is common practice that the courts decide that it is not in the best interest of the child to be removed from the prospective parents. The problems created from these experiences are difficult ones and often result in lack of confidence and hard feelings on the part of all involved. It is recommended that the Act be amended to place specific requirements in all matters involving the placement of Indian children to assure that the tribes have immediate knowledge of these situations. At the present time the Oregon State Attorney General is attempting to include a provision in its adoption petition form that the parents of an Indian child can waive all their rights under the Indian Child Welfare Act with specific attention to disregarding the placement preference requirement. We propose that this an undermining of the Act and that these parents do not have the right to deny their child the means necessary for a strong identity and the resources of the tribe. Tribes and Indian organizations have considerable experience with the consequences of these practices. They know that the children who are denied these rights are among the most confused and troubled and the most difficult to treat. These are the children who require the most expensive care available and all too often that care is provided in state and federal prisons and correctional institutions.

Our survey revealed that the tribes and off reservation programs are working well together by supporting eachother's efforts. The services provided by urban programs to the tribes include two general catagories:
1. Direct service which includes counseling, foster care, supervision, home visits and foster home recruitment
2. Advocacy which includes legal assistance, identification of children in care and expert testimony.

The services most frequently provided by the tribes to urban programs are
1. Identification of tribal resources
2. Casework services: advocacy and support
3. Foster home and group care
4. Legal assistance
5. Enrollment services.

We request that you give serious consideration to the requests and recommendations that we have made. Our funding level request can be supported by data collected directly from tribal and Indian organization programs.

Thank you for the opportunity to present this information to you.

Mr. **Alexander** [presiding]. In the previous testimony by the Bureau and ANA, reference was made to this 1-year coordination period in working out their joint programs, and perhaps some of the concerns you raise about the comparability of data and training should be addressed in that period. Has your organization been contacted by either one of these agencies for your input?

Ms. **Blanchard**. Directly in that effort, no, sir.

Mr. **Alexander**. Have you been contacted by either one of these agencies formally for any purpose in the last year pertaining to this act?

Ms. **Blanchard**. No; neither the Bureau nor the administration on Native Americans has ever directly requested assistance from our association.

Mr. **Alexander**. This is the Association of Social Workers?

Ms. **Blanchard**. Yes; American Indian and Alaska Natives.

Mr. **Alexander**. And you are the primary field workers, basically, in the Hope Program?

Ms. **Blanchard**. Yes.

Mr. **Alexander**. In addition to the judicial personnel?

Ms. **Blanchard**. Yes.

Mr. **Alexander**. Would you like to proceed, Ethel?

STATEMENT OF ETHEL C. KREPPS, PRESIDENT, OKLAHOMA INDIAN CHILD WELFARE ASSOCIATION, AND ATTORNEY, NATIVE AMERICAN COALITION OF TULSA, INC., TULSA, OK

Ms. **Krepps**. Thank you. I am going to be addressing the legal aspects of the national survey that was taken that Evelyn Blanchard has already informed you about.

The cart was put before the horse in this instance, and we are trying to move the cart without the horse. There was no prior evaluation taken of the legal resources that were available to accept Indian Child Welfare Act cases in the legal arena by the tribes or by the Congress. In many instances, tribes has exclusive jurisdiction when they had no facilities and/or no procedure in place to implement that authority. Therefore, there are a lot of instances where these Indian children are in a no-man's land, as far as the legal procedure goes.

In the survey, 32 percent of the funded programs reported that they were having to buy the services that were needed for their clients in the legal area. The legal assistance that they were buying could only go so far, so they had to limit it to a certain aspect of legal services. Primarily what they were doing was asking an attorney to intervene in some State court and transer the matter back to the tribal court where they would not need legal representation.

We have one case in Oklahoma where a tribal case was dismissed in court because the judge ruled they were practicing law without being admitted to the State bar. There is a lack of resources and an inability to function in the legal arena by a majority of the tribes.

The lack of resources is reflected in the decisions of the State courts not to transfer ICWA cases back to the tribe. The four most cited reasons in the study not to transfer were that the State court lacked confidence in the tribe to handle the matter. It was my understanding, in reading the law, that the Congress had already made the decision that the tribal courts were competent to handle the matter and that this would not be good cause not to transfer the matter. However, it is being used.

The second most cited reason was improper notice procedures. The notice procedures are very explicit in involuntary proceedings. However, in voluntary proceedings they are not as explicit. But that does not say that the placement preference is not to be followed. In so many cases in voluntary proceedings, the States are attempting to find ways to circumvent the placement preference by not sending out any kind of notice at all. The survey has indicated that in probably around 70 percent of voluntary proceedings, the tribes and organizations had to find out about these proceedings by indirect means.

Mr. ALEXANDER. Are these mostly in protective services type of situations, these involuntary proceedings?

Ms. KREPPS. It arises in all areas. A termination of parental rights can occur in an area where the father is not even aware that he is the father. It ranges all the way from that to a behavior or a lifestyle on the part of the parent, which really has no direct bearing on harm to the child, being used as a reason to terminate parental rights. So there is just a whole realm of reasons and excuses being used to not provide notice.

There was an instance reported where the State court refused to recognize an Indian child's eligibility for enrollment. So the State courts are very innovative in their reasons not to transfer. According to my interpretation, a good cause to transfer is outlined in BIA regulations under State guidelines. Everybody that I hear talk about the State guidelines says that it is not binding. However, it is my understanding that this was the strong legal position of the BIA, the guidelines were the legal position. They were in the Federal Register, but the only reason that they were not called regulations is that the BIA could not interpret or make rules for State courts. But they are the legal position, and nobody seems to recognize what the guidelines are.

The tribes are not able to deal with these loopholes because they are not sophisticated enough to see them for what they are. For instance, we had a case in Oklahoma where the Otoe-Missouri tried to intervene in an action in a State court. They were dismissed in State court because they were told that they were in a nontrust status. However, in Oklahoma, the Otoe-Missouri has the biggest tribal bingo operation in the State. So there is a lot of confusion on the part of the tribes in trying to deal with legal matters in the State court. While the law addresses the legal aspects of reuniting the family there it does not place a heavy emphasis in the funding patterns on enforcing legal rights and getting legal representation and legal guidance, which is kind of ironic because the law was written to address the legal system of removing the children. That is not to take away in any way from the rehabilitative part and the social services part, but I think there needs to be emphasis also on the heavy burden that is placed on a tribe that has exclusive jurisdiction and wants to transfer or reassume, and there is no mechanism in place to assist them.

There are many instances when the ICWA has triggered in the State court system, and in the CFR court system, too, when the tribe is not even notified until after the proceedings are over. By then, the battle lines have been drawn, and they are battle lines; it is one side against the other. There is no ability at that point to work together and use tribal resources, or work with the State in developing resources.

The questionnaire had the question: "What one service would you add or which existing service would you expand if you had more money?" One of the most frequently cited services was a legal service.

There needs to be attention given to the establishment, implementation, and strong support for either the administrative governing bodies sitting as the tribal court, which they have every authority to do without establishing the whole judicial system, in child-custody matters. Or, in the alternative, there needs to be strong emphasis placed on just establishing a children's court. The ideal picture, of course, is to establish a full tribal court. But it is ridiculous that the attention is not being given in every State to have the tribal governing body sitting as the court in child-custody matters because the mechanism is in place, and the authority is there, and yet tribes are not aware that they have this legal right.

The questionnaire revealed that approximately 50 percent of their staff were not legally trained. There are social workers that have to function as paralegals, and there is a desperate need for legal training if we are going to give the tribe the authority to hear legal matters. We need to give the social workers the training they need, and they need to know when they are functioning as a social workers, and they need to know when they are having to function as a paralegal. Under this act, that is intertwined, and there is not going to be proper implementation until the worker knows the role difference and knows how to function in each role. It is too heavy a burden without proper training. You certainly would not go out and try and repair your automobile with a screwdriver, and that is what we are trying to ask these social workers to do. We are asking them to have knowledge that is far beyond anything they have been trained or educated to do, and we are not going to have proper implementation until that training is a reality.

The independent adoptive placements and placements by private agencies is a real serious national problem, as indicated by this survey. The States—and Oklahoma is one of them—are attempting to use the affidavit process to get around the placement preference. This affidavit in my hand states on No. 4, "I do not want my baby . . ." whatever the name is, " . . . placed for adoption with any member of my extended family"; No. 5 "I do not want my baby placed for adoption with any member of the Indian tribe"; No. 6 "I do not want my baby placed for adoption with any member of the father's extended family."

This affidavit is filed in State court. It is signed by a judge of the district court, and therefore the court/placement agency is allowed to get around the ICWA placement preference. It was my understanding that you could take the confidentiality issue into consideration for a different placement. It was only a factor to be considered by the court. Just because man has bitter feelings against an

Indian tribe or bitter feelings against an Indian father, that is not justification for getting around a placement preference that Congress had decided will be in the best interest of the Indian child. If it is going to be your last act of parenthood, I do not think you should be able to totally determine the destiny of your child when you are not going to have the duty and when you are not going to have the responsibility. But in the legal system, we are dealing with State judges who are using this affidavit to do that.

Mr. ALEXANDER. Do you have a copy of that affidavit for the record?

Ms. KREPPS. I will be glad to furnish it.

Mr. ALEXANDER. Is this widely used in your State?

Ms. KREPPS. It has been widely used.

Mr. ALEXANDER. Has it been challenged in any court proceedings of which you are aware?

Ms. KREPPS. Not that I am aware of.

Mr. ALEXANDER. It sounds as if it is boilerplate, does it not?

Ms. KREPPS. It definitely is. I have another affidavit here that the mother can sign.

Mr. ALEXANDER. Are these produced by the State or the county welfare departments?

Ms. KREPPS. Yes. This has been filed in the State court.

Ms. BLANCHARD. I might also add that at the present time, the State's attorney general office in Oregon is attempting to implement, within adoption petition forms, a waiver of the Indian Child Welfare Act. This would not even require that there be an affidavit produced.

Ms. KREPPS. The other affidavit, in essence, made the mother a single parent without any husband, and the baby without a father, and the father a nonfather by saying that he was alleged, and she did not know his whereabouts, and that he has not contributed to the support of the child.

It is my understanding that the standard to terminate parental rights under the Indian Child Welfare Act was beyond a reasonable doubt. I did not know that if you did not know where the parent was, or that he had not contributed to the support of his child; that was enough to get rid of him. I thought that he would at least have a hearing and have some evidence presented, and it might be reflected in the court's finding that the evidence against him was beyond a reasonable doubt, which I think is the proper standard.

Mr. ALEXANDER. Thank you.

[The prepared statements follow. Testimony resumes on p. 122.]

STATEMENT OF ETHEL C. KREPPS, ATTORNEY/PROJECT MANAGER, NATIVE AMERICAN COALITION OF TULSA, INC. TULSA, OKLAHOMA: PRESIDENT, OKLAHOMA INDIAN CHILD WELFARE ASSOCIATION.

Mr. Chairman and members of the Committee. I am pleased to have the opportunity to present testimony regarding the current Indian Child Welfare Act Conditions in the State of Oklahoma.

There are 169,434 American Indians in Oklahoma. This represents a growing population with the state. The figure reflects a 70% increase in the State Indian population from the 1970 census. There are 43 Indian Tribes represented in Oklahoma, all removed under tribal treaty terms and all with varying tracts and location of Indian Country jurisdiction and all tribes have varying requirements for tribal membership. Approximately 55% of the State Indian population is under 18 years of age or 89,500 youth. Oklahoma has the second largest Indian population in the nation.

In Oklahoma the Indian Child Welfare Act programs have in the past two years taken several actions which support the implementation of the Indian Child Welfare Act. The following are the more positive aspects of the Oklahoma implementation of the ICWA:

1. The Oklahoma Indian Child Welfare Association was organized. This Association is composed of all Indian Tribes and Indian Organizations located in Oklahoma which are recipient of ICWA funds. (Many tribes are not refunded from year to year and retain their membership status within the Association at the tribal expense). Also numerous individuals join the Association. RE: Department of Human Service employees and Attorneys.

2. The Oklahoma Indian Child Welfare Act was passed by the State in 1982. The State law supports and clarifies the provisions in the Federal ICWA. The Oklahoma Act provides for Tribal/State Agreements whereby DHS will make foster care payments for tribal children placed by the Tribe, and has allocated $400,000 of the State budget for this purpose, however, to date only two Tribes have been successful in negotiating an Agreement with the State.

3. The Oklahoma Supreme Court enacted a Rule for State District Courts to follow which was effective March 6, 1984 which mandates that all decrees of adoption, divorce or separate maintenance; all orders of adjudication of juvenile proceedings, termination of parental rights and all final orders in Habeas Corpus and Guardianship of the person proceedings resulting in the adjudication of status, custody or wardship of minor children, shall contain a finding of compliance with the Indian Child Welfare Act and the Oklahoma Indian Child Welfare Act. The Trial Courts Orders and Journal Entries shall reflect findings as required by these two Acts.

4. In March 1984 the Oklahoma Indian Child Welfare Association presented two workshops to the Legal Community. State Judges, State District Attorneys, State Legal Aid Attorneys, Attorneys in private practice and employees of the Department of Human Services and other interested individuals were in attendance. These workshops were sponsored by an small grant of $2,500.00 from the American Bar Association.

5. The Comanche Tribe of Oklahoma has implemented a Children's Court and a Tribal Foster Care Review Board to work in cooperation with the State of Oklahoma Foster Care Review Board in the placement and tracking of tribal children.

6. The State Judicial system and State placement agencies are in the majority of cases knowledgable of the ICWA and in most instances are willing to work with Oklahoma Tribes and Organizations in the placement of Indian children.

Now for the negative side of the Oklahoma picture:

1. In April 1984 a survey was completed and a sampling is being reported here which is representative of the Oklahoma Tribes. The Cherokee Tribe will represent the larger Eastern Oklahoma Tribes known as the 5 civilized Tribes. The Cherokee Tribe has 62,000 members. They have no tribal court and the tribe is unclear Re their status for reassumption of jurisdiction over ICWA cases as they are under the Curtis Act. The Caddo Tribe represents the smaller tribes in Western Oklahoma. The Caddoes did not receive ICWA funds the FY '85 year but have access to the CFR Courts to handled their Indian Child Welfare Act child custody cases. The Native American Coalition of Tulsa will represent the urban Indian Organization which offers legal representation to urban tribal members and also represents the Oklahoma Tribes and their members in state courts. NACT will also represents the other National urban ICWA programs which every year since the funding of these projects began has been under a cloud of not being re-funded. There was strong reaction against the intent of the BIA to not re-fund urban programs. The question was asked: How can the BIA say that urban tribal members are non-Indian and not entitled to services based only on geographical location.

2. The survey in general revealed a confusion and discouragement with ICWA programs regarding their inability to provide necessary services to tribal children and families. It appears that the ICWA programs have become the Legal social service programs of the tribes and organizations. They have expanded the duties of the programs but the dollars have decreased; confusion regarding the direction the programs should be taking due to decreased funds, For example: Direction A-toward more preventative services; direction B-toward more rehabilitation of the family; direction C-toward more legal services; direction D-toward more strong support services.

3. There are eight tribes in Oklahoma that did not receive ICWA funds for the current year. These tribes were the Creek Tribe; Seminole Tribe; Iowa Tribe; Caddo Tribe; Seneca-Caygua Tribe and the Delaware Tribe. These tribe members were denied services and legal representation due to the tribe not being re-funded.

4. The survey indicated that the most successful service provided by ICWA programs was in the category of Social Services:

A. Counseling
B. Education teaching
C. Foster recruitment

5. The second most successful service provided was Legal Services

A. Court Intervention
B. Transfer of Cases to the Tribal Court
C. Legal Representation for children/families
D. Legal Guidance for children/families

50% of the Oklahoma Tribes depended on the Oklahoma urban programs to provide the necessary legal services for the tribe. The other 50% indicated they don't intervene in state court matters because they do not have the legal resources to do so.

6. The least successful services provided was in the area of Supportive Services:

   A. Foster care training and placement
   B. Adoptive Services

7. The 2nd least successful service provided was in the area of Preventative Services:

   A. Prevention of child abuse and neglect
   B. Prevention of health and other education.

8. The 3rd least successful services provided was in the area of Rehabilitative Services:

   A. Parenting Classes
   B. Transportation needs
   C. Alcohol Abuse Counseling
   D. Personal Financial Management
   E. Employment Assistance
   F. Out of Home Placement Tracking Systems

The survey revealed the current amount per program funding was $74,725.00. The programs indicated the minimum amount needed for each program was $219,000.00. This amount would provide for all necessary services. The amount would allow for programs to expand current services to include Foster care and Adoption components and allow Preventative Services, Rehabilitative Services and Supportative Services to be implemented.

The Oklahoma client caseload (as reported by all programs to the BIA as individual case units)has Doubled every year since 1981.

1981...1,498 units served
1982...2,243 " "
1983...4,343 " "

The current 1984 projected individual case unit load up to April 1984 was

1984...3,455 units served.

This 1984 figures for 1/5 of the year would indicate that 19,275 individual units will be served this year. This figure still indicates that over 3/4 of the State's Indian child population will not be served during the 1984 year. But the dramatic increase reflects the current policy and practice in Oklahoma now taken by the State judicial system and the state placemant agencies of turning most ICWA cases back to the Indian Tribes and Organization for disposition.

The survey indicated that if the current funding level is reduced to the proposed $8.7 Million the Oklahoma ICWA Programs would have to cut back or totally cut out the following services now being provided:

A. Foster Care Recruitment and Adoptive Placement -50% of the programs would take this action.

This cut back by the Indian programs would coincide with the current Oklahoma State policy of turning ICWA cases back to the Indian Tribes and Organization for disposition. This is a catch 22 situation for the ICWA PROGRAMS. The survey indicated that 50% of the ICWA programs are not seeking transfers of ICWA cases from State Courts due to lack of available services; lack of money for foster care; lack of attorney fees for legal representation in the courtroom; lack of any legal personnel or knowledge to handle the disposition and lack of a tribal court.

B. Rehabilitative Services would be the next service to be cut if reduced funding occurs, these included services of:

Counseling; training and home studies.

C. Third to take a cut would be strong Support Services: these would include: transportation and employment assistance.

D. Legal Services would be the next area to be cut back, which included both legal representation of the Tribe and legal representation of the Indian parent and/or child. 15% of the programs indicated they would reduce the number of referrals for social services they could accept from the State if a cut back happened. The survey indicated that approximately 638 cases would be denied services under current case load counts if funding levels were reduced. This fact coupled with the fact that Indian unemployment in Oklahoma ia at 45% with 35% of the State Indian population employed full time still under the poverty income level. Puts the Indian family in a high risk category for child removal without resources.

Some Oklahoma Courts are stil unwilling to transfer cases to the tribal courts after the tribe intervenes and requests a transfer. The non-Indian parent is allowed to block the transfer as the law reads "ANY PARENT" can object the transfer. How ever, other provisions of the law read that ANY PARENT cannot sign papers to relingquish rights within 10 days of the birth of the baby. The Oklahoma courts are contending that this provision does not apply to non-Indian parents/but both provisions read ANY PARENT. Apparently, the provisions stating ANY PARENT do not mean any more or any less than what the Judge wants them to mean.

Three of the cases in which Oklahoma courts was unwilling to transfer cases were based on the following reasons:

A. Tribe had non-trust status. The Tribe was a federally recognized Tribe and has one of the largest Bingo operations in existence.

B. Practicing law without being admitted to the State Bar Association. (Tribal Social worker had attempted to represent the Tribe in State Court.)

C. Refusal by the State Court to recognize the child was eligible to be enrolled as a tribal member.

These examples point out the need for training within the state judicial system and within the tribal programs, so that each can know the legal responsibilities and legal rights they were afforded under the provisions of the ICWA.

9. The survey indicated that 75% of the Oklahoma Tribes had choosen not to intervene in State Court proceedings based on the following reasons:

A. Inability to provide the necessary services
B. No money for travel
C. No available children's shelter
D. No money for food or clothing for the child
E. Sheer number of cases

When a tribe did intervene in 70% of the cases the Tribe was denied access to the records and files. When the ICWA program took over the case they were allowed to see the files and records in 40% of the cases. 30% were denied access to the records and files even after they took over a case. However, 10% of the programs were allowed the files depending upon the Judge or Social Worker involved on the part of the State.

In 80% of the cases of intervention in State Court ICWA programs took over the services being provided by the county or state. In 60% of the cases they provided concurrent services with the county or state.
These services included:

A. Court ordered counseling/parenting courses
B. Home Studies-Investigations-Monitoring-Visits
C. Therapy for individuals
D. Advocacy

10. Notice continues to be a problem in Oklahoma. 30% of the ICWA programs indicated they received notice in voluntary adoption matters. 50% indicated they do not receive notice from private agency. They are unaware in these cases if the placement preference is being followed. In involuntary child custody proceedings in State Courts 100% of the responses indicated they have not been notified by the Court of a case heard in state court but learned of it through other means. The survey did not reveal how often this occured in all instances. However, the highest rate of such incidents to one respondent occured 40 times. The next highest was 36 unreported cases where the ICWA program did not receive notice of involuntary proceedings in the state court.

11. Oklahoma courts are still terminating parental rights based on the lifestyle of the parent without expert testimony to show any harm to the child.

12. Oklahoma Courts are still continuing the hear ICWA matters in which either the child or the unwed mother resides or is domiciled on Indian Country.

13. Oklahoma ICWA Programs survey responses indicated that the majority of programs still continue to need training in various areas especially in the area of family counseling, sexual abuse/treatment; stress management; court reporting and writing; client counseling; working with foster parents; adoption procedures; proposal writing; knowledge of State/Tribal Agreements; para-legal training; court room techniques; case investigation; foster care supervision; adoptive licensing procedure; adoptive placement procedure; data collection training; tracking system information and training; dealing with hostile clients and other Indian Specific training.

_______________________________) NO. - 00
n alleged deprived child.)

FILED IN DISTRICT COURT
[redacted], OKLA.
[redacted] DIVISION

NOV 10 1982

[redacted] COURT CLERK
By_______________Deputy

AFFIDAVIT

STATE OF OKLAHOMA)
) ss.
COUNTY OF [redacted])

I, [redacted], being first duly sworn, depose and say as follows:

1) That I am the natural mother of [redacted], a fe male child born out of wedlock on the 5th day of October, 1982.

2) That I do not want my name or address or any other identifying information revealed to this child or to any other person and that I desire that my identity remain confidential.

3) That this affidavit is executed in compliance with Section 1951 of the Indian Child Welfare Act, 25 U.S.C. 1901 et seq. (1978).

4) That I do not want [redacted] placed for adoption with any members of my "extended family."

5) That I do not want [redacted] placed for adoption with any members of the [redacted] Indian Tribes.

6) That I do not want [redacted] placed for adoption with any members of the father's extended family."

[redacted]
Mother

Subscribed and sworn to before me this 8th day of November, 1982.

[redacted]
JUDGE OF THE DISTRICT COURT

STATE OF OKLAHOMA, [redacted] COUNTY:
The undersigned hereby certifies the instrument to be a full, true and correct copy of the original, as the same appears on record in this office.
Witness this 10 day of Nov 82

FILED IN DISTRICT COURT
[redacted]

NOV 1 0 1982

[redacted] COURT CLERK
By_______________Deputy

AFFIDAVIT

STATE OF OKLAHOMA)
) ss.
COUNTY OF [redacted])

[redacted], of lawful age, being first duly sworn, deposes and says as follows:

1. That she is the natural mother of [redacted], a female child born out of wedlock on the 5th day of October, 1982.

2. That [redacted] has been named as the alleged father of said child.

3. That the address or whereabouts of said [redacted] is not known to me and cannot, with due diligence, be ascertained.

4. That said [redacted] has not contributed to the support of said child and has not exercised parental rights and duties as to said child.

[redacted]

Subscribed and sworn to before me this 8th day of November, 1982.

[redacted]
JUDGE OF THE DISTRICT COURT

[redacted]OMA [redacted]
The undersigned hereby certifies this instrument to be a full, true and correct copy of the original, as the same appears on record in this office.
Witness this 10 day of Nov 1982
WANDA JOHNS, Court Clerk
By_______________Deputy

BUREAU OF INDIAN AFFAIRS

INDIAN CHILD WELFARE ACT

APPROPRIATIONS TITLE II - TRIBES/INDIANS ORGANIZATIONS

Recommendation

We urge your support of an additional appropriation level of at least $2 million for FY-1985 for Title II of the Indian Child Welfare ~~Act, over that requested~~ by ~~the Administration.~~

Background

The Indian Child Welfare Act was passed by Congress to prevent the removal of Indian children from their families and cultural environment. In the past, one in five Indian children were removed from their families were placed in a non-Indian eviroment. This piece of legislation allows for the tribal entities to establish a welfare system for the minors (children) of their tribe. The Act further provides funds to establish court systems, develop children's codes, provide social services such as counseling, parenting skills, foster care standards, adoption and recruitment of foster care families, and payment for these services. It also interpretes cooperative arrangements between state welfare systems and the tribes authority to intervene and transfer Indian Child Custody cases to tribal control.

Comments:

1. The Bureau of Indian Affairs is proposing to eliminate the funding of off-reservation Indian organization programs for FY-1985 appropriations in Title II of the Indian Child Welfare Act.

2. $7.7 million is budgeted for FY-1985. This is a reduction of $1 million from FY-1984. The $1 million reduction assumes termination of Urban Indian/off-reservation programs.

3. This law does not limit authority or funding to reservation status Indians.

4. These Indian organizations act on behalf of the tribe on child custody cases of their respective members. In addition, they act as a liason for the tribe providing court appointed counseling and other preventative family break up services.

5. A funding formula for needs demand be developed by the Bureau of Indian Affairs to insure adequate funding of Title II.

CONTACT ORGANIZATION: Oklahoma Indian Child Welfare Association
CONTACT PERSON: Ethel Krepps, 1740 West 41st Street
(918) 446-8432

VISITORS NAME ____________________
TELEPHONE ________________
ADDRESS ____________________

ALAN J. COUCH
JUDGE

DISTRICT COURT OF OKLAHOMA
CLEVELAND COUNTY
COUNTY COURTHOUSE
NORMAN, OKLAHOMA 73069
TELEPHONE 405-321-6521

April 19, 1984

The Honorable Bernard Kahrahrah, Chairman
Comanche Indian Tribe
P. O. Box 908
Lawton, Oklahoma 73502

Dear Chairman Kahrahrah:

The Oklahoma Supreme Court Juvenile Justice Oversight Committee congratulates you and the Comanche Indian Tribe on the work you are doing in the area of foster care review.

The Comanche Indian Tribe in Oklahoma leads the way in providing training and linkage with State foster care review boards. We appreciate the effort of the tribal review boards in developing expertise to replicate the review process with other Indian Tribes. The expertise you provide will assure children, families and the tribal courts of the support they need to achieve solutions that are in the best interest of the children and families they serve.

The Oversight Committee commends and supports your project and the interest and concern you have for children and families.

Sincerely,

Alan Couch

Alan J. Couch, Chairman
Supreme Court Juvenile
Justice Oversight Committee

P.S. I am pleased to be advised as to the great work you are doing in foster care review and hope that the Comanche Tribe will continue to keep this effort very high on it's agenda.

Don Barnes

The Honorable Don Barnes
Chief Justice of the Supreme Court
State of Oklahoma

THIS RULE BECAME EFFECTIVE ON MARCH 6, 1984.

RULE 8.2, RULES FOR DISTRICT COURTS,
12 O.S. Supp.______, Ch. 2, App.
SUPREME COURT RULE FOR DISTRICT COURTS

All decrees of adoption, divorce or separate maintenance, all orders of adjudication in juvenile proceedings, termination of parental rights and all final orders in Habeas Corpus and guardianship of the person proceedings resulting in the adjudication of status, custody or wardship of minor children, shall contain a finding of compliance with 25 U.S.C.A. 1901 et seq. (Indian Child Welfare Act of 1978), 10 O.S. 40 et seq. (Oklahoma Indian Child Welfare Act), and 10 O.S. 1601 et seq. (Uniform Child Custody Jurisdiction Act).

The trial Court shall in all such proceedings make findings of fact as to the child's correct, full legal name and date of birth and all instruments memorializing such decrees, orders and judgments as required by 12 O.S. 32.2 shall recite the findings required hereby.

This rule should be effective the date hereof.

DONE BY ORDER OF THE SUPREME COURT this 6th day of March, 1984.

/s/ DON BARNES
CHIEF JUSTICE

PREPARED TESTIMONY OF THE ASSOCIATION OF AMERICAN INDIAN AND ALASKA NATIVE SOCIAL WORKERS, INC., SUBMITTED BY ETHEL C. KREPPS, PRESIDENT, OKLAHOMA INDIAN CHILD WELFARE ASSOCIATION

The Indian Child Welfare Act Title II programs were intially funded at $5.5m in 1980 when 122 tribes and 43 off-reservation programs received grants. A pattern of three-fourths of the money to tribes and one-fourth to off-reservation programs was established. In recent years the programs have been funded at a level of $9.7m. However, in Conference Committee before Congress' Christmas break, funding for Title II programs reduced to $8.7m. We impress upon you the importance of restoration of the $1m for these programs recognizing this form is not timely for the request.

Over the last three years the Association joined by tribes and off-reservation programs has requested an increase in funding of these programs to $15m. This figure has been used because it was first advanced by the Bureau of Indian Affairs, the agency responsible for the gathering and analysis of data to establish budget requests. We have not had access to those calculations and are therefore unable to describe the requirements identified. We have learned that the Senate Select Committee on Indian Affairs has requested an increase in funding to $12m.

In our opinion a credible position with regard to data collection and analysis of Title II programs has never been established. This problem has been called to the attention of Congress in successive testimony of the Association. Most recently this problem was presented to Congressman Pat Williams at hearings held in Spokane, Washington in August, 1983. We have a number of concerns regarding the Bureau's response to its mandate to implement the Act. In this connection we are confused that there has not been a national effort under Bureau leadership to develop adequate reporting systems. Reporting systems are primal ingredients in our budget process. A national reporting system to measure the capability of Title II programs does not exist. The problems created for Congress and the Administration can be seen immediately.

The Bureau's Branch of Social Services performs two periodic surveys. One is an unduplicated case count that reflects separation in state and federal responsibility for various catagories of assistance and service. The other is concerned with jurisdictional status of Indian children. These reports give the Bureau a guage of the direct federal financing needed. The Bureau has not brought these reports forward to the tribes and Indian organizations for an examination as to how universal information needs can be met. It is impossible to understand how the Bureau is able to translate the operations of the Title II programs to the Administration and Congress when basic reporting mechanisms have not been developed. Upon entry into office the Administration determined to eliminate the Title II programs because they were inadequately funded to perform. In view of the responsibility that was thrust upon tribal governments we agree with the Administration's position that funding is inadequate performing. In the last year the Cheyenne-Arapahoe program has returned 71 chidlren to their families and people. The Burns-Paiute and Metlakatla communites did not place any children outside their families in FY83. What are the specific ingredients of effort that have made this possible? Unfortunately, focus to determine the characteristic knowledge and technique of these successes is absent in the Bureau's activities.

Another area of implementation which is being neglected concerns training. It is well recognized in the field of social work that different peoples bring variable interpretations and resources to therapy. In spite of this there has not been a national effort to examine the theoretical base of Indian social work practice. This is especially crucial because many tribes and organizations are required to hire workers at the master's level for progam directorships. Many tribes do not have local personnel with these credentials and are forced to hire non-Indian personnel for these positions. This presents problems because the non-Indian personnel do not know the community and its people and are therefore handicapped in their ability to make full use of the resources available.

The pattern that has developed is that these workers become frustrated and overwhelmed with their individuals have been in charge they have retained broad activity to themselves. It is the unusual case when these non-Inidan workers have brought their staff into important decesion making roles. These practices have consistantly limited the ability of these programs to develop. As a consequence many Title II programs must begin development at each new funding period. This is inexcuseable and encourages ineffective use of resources that are badly needed. Lack of leadership in this area inhibits the reight of self-determination. It is impossible to be self-determining when the manner in which one can best proceed is confused and obscured. These are serious developmental concerns that will not go away. The limited training that has been available has been funded through the Administration for Native Americans and has been concentrated on the development of tribal-state agreements and compliance with the Adoption Assistance Act. Through the years Bureau funds have been made available for training of tribal court judges but again it has not been comprehensive in scope and social services staff have not had the opportunity to participate in the design and have had very limited participation as students. It must be called to your attention that we are dealing with some of the most intimate aspects of life and the approach must be knowledgeable and judicious.

These situations highlight the difficulties involved in data gathering efforts. A uniform reporting mechanism that reflects services provided by these programs does not exist and this problem is complicated by the frequent changes in principal personnel and there complications are further compounded by the erratic funding patterns established by the Bureau. There is no gurantee that a program which is providing essential and well grounded services will receive fudning in the following year.

We see an urgent need to establish a reliable data base regarding these programs and implementation progress. In preparation for oversight hearings on the Act which will be held later this spring the Association is presently surveying all tribes and urban organizations to gather information regarding adequate levels of funding in addition to needs for amendments and regualtions changes. We will be prepared to present our data and analysis at the oversight hearings.

Through the years the Title II programs have taken on greater and greater responsibilities in the area of family and children's services. For example, it is not unusual that program staff are performing child protective investigations which have previously been the guarded responsibility of states. In spite of the fact that this situation has resulted principally from the States' moves to absolve themselves of responsibility for Indian children after passage of the Act, we are encouraged by the moves and welcome the opportunity to work more closely with states and county governments to meet local co-existing needs. The extensiveness of these practices will become known through our survey. But immediately you can begin to see the complicated problem involved to make truly reliable projections regarding funding levels. We do know that the resources of Title II monies are strained. The Fy 84 request for Title II funding by the Seattle Indian Center reveals that the average annual cost per client will be $180.00. The Spokane Tribes's request includes an average annual cost per client of $333.00.

In our testimony before you last year, the following information was provided:

"The services provided through Title II grants cover the amount of protective and traditional child welfare services offered by state and county agencies throughout the country. These include ongoing outreach, diagnosis and treatment, recruitment and licensing of foster care and adoptive homes. Because of the economic stress in these communities the programs provide extensive crisis intervention and support services...In FY 81 the Portland area maintained an average caseload per program of 217 cases with an expenditure of $775.00 per family. Comparable statistics for Sacramento and Billings area are 368 average caseload and $184.00 average cost for services to familes, and 214 cases and $280.00 per family respectively.

Information from Oklahoma graphically speaks to the actual fiscal benefit to the Indian person.

ICWA appropriations to the BIA resulted in these actual figures for Oklahoma:

FUNDS REQUESTED	FUNDS AWARDED	INDIAN POPULATION	PER CAPITA
$ 842,833.00/1980	$ 499,403.00/1980	169,459	Less than $3.00
$1,568,877.00/1981	$ 918,483.00/1981	169,459+	Less than $6.00
$2,386,749.00/1982	$1,204235.00/1982	169,459+	Less than $8.00

It cannot be avoided that social services programs in any community provide essential ingredients of the safety net that is necessary to meet basic and common human needs.

A comparison with expenditures for like services provided by the State of Connecticut reveals an average cost of services provided to families of $6,178.00. The costs for family focused services throughout the country range from $1,500.00 to $9,000.00 per year per family The disparity between the resources available to the general public and to Indians is staggering. Although Indians are eligible to receive services provided to all other citizens, our experience since the passage of the Act has been that the courts and social services departments choose to absolve themselves of Indian programs", funded through the Indian Child Welfare Act.

You are again being asked to reduce the level of funding for Title II programs to $7.7m in FY 85. We submit that this request is being made to you in the absence of reliable data and are alarmed at the callous inattention of the Bureau to establish a relaible data base. In FY 85 it is proposed that funding for off-reservation programs will be reduced to $1.7m. Tribal programs will receive $6m in funding. In our opinion this is excessively inequitable. We call your attention to the fact that at any given time, 50% of the Indian population is in constant movement on and off reservation to seek employment and improved living conditions. Unemployment rates are standard 60% across Indian country. The stable urban Indian populations are small while the transient Indian population is great. No attention has been given to these phenomena by the Bureau and the phenomena by the Bureau and the Department of Health and Human services which shares responsibility to assist tribes and Indian organizations to implement the Act. The current budgetary constraints on state and county governemnts magnifies the stress placed on India programs to provide services to their people that are the right of all citizens. We ask that you carefully examine our position and reject the Administration's proposal to reduce funding to $7.7m in light of the fact that the Bureau has not presented reliable information on which to base its projections. We are mindful that the Administration's proposal to eliminate entirely funding for Title II programs has not been withdrawn. In our opinion, this is a flagrant disregard of the needs of Indian people and urge your sober and probing examination of the problems we have presented to you.

Mr. ALEXANDER. Our next witness is Linda Amelia of the Comanche Tribe of Oklahoma.

STATEMENT OF LINDA AMELIA, DIRECTOR, COMANCHE FOSTER CARE REVIEW BOARD, LAWTON, OK

Ms. AMELIA. I am Linda Amelia. Presently, I am a consultant with the Comanche Tribe in Oklahoma. In the past, I have worked with the small tribes in California. I would like to give some examples of the inconsistencies in the funding formula.

Robinson Rancheria has a membership of approximately 800 members. They are located in Lake County, CA. They have approximately 200 members of trust land. They have been, on and off, funded throughout the past few years at the most recent funding allocation of $50,000. In California, of course, there is no jurisdiction; they do not have a court. In comparison to a large Comanche Tribe, which has exclusive jurisdiction, one of the few children's courts in the State of Oklahoma, having approximately 8,500 members, with 4,500 living on trust land, it has received $46,000. That is the highest level of funding they have received since they have been funded.

As a supplement to that, they receive title IV-B funds. That amount is only $5,000. If they were to certify to be IV-E eligible, which they are working on doing, not just to receive the additional $600 but because the assurances are good in their efforts to provide permanency planning, the tracking of children, and judicial review. That is a help. However, it is a real piecemeal approach to providing comprehensive, effective, court-related child welfare support services.

Another problem, which was brought out earlier, is the court funds provided by the bureau. The Comanche children's court operated last year with an approximately $55,000 budget. This year, just the other day, I was informed that the Advice of Allotment for this fiscal year for the children's court is only going to be $29,000.

I would like to present as an addendum to our testimony a copy of Chairman Kahrahrah's testimony before the House Subcommittee on Appropriations, in which he cites the problems of the Anadarko Area Office and the funding available. He supports increased funding to the bureau for tribal courts and requests increased funding for child welfare, that of 638 grant mechanism, and that a 3-year funding cycle be supported also.

Mr. ALEXANDER. That will be printed in the record in full.

The funding that you mentioned for the child welfare court, is that court funding directly, or is that Indian child welfare funding? Do you know what category it is?

Ms. AMELIA. It is not from the Anadarko Area Office's allocation. It is from another source the bureau has, and I do not quite have the exact title. It is not an ongoing funding mechanism.

The other thing I have experienced in working in Oklahoma recently was that the bureau there discourages the tribes from applying for adequate funding under the formula. This only justifies the bureau's request for decrease in funding overall. Even though we realize the funding is not there, if we do not document our needs, you in Congress are not going to know about what that need is.

The Anadarko Area simply divides up the funds so that programs can barely function. They just try to give all the tribes as much as they can. Also, there are some inconsistent policies implemented throughout the area offices throughout the Nation, some of which are very restrictive and not in line with the intent of the law itself.

In regard to the Sacramento agencies' decrease in funding, that was about a 40-percent decrease a few years ago, the California State Legislature just recently chaptered a Senate joint resolution supporting an increase in funding, and I would like to present that for the record also.

Mr. **Alexander**. It will appear in the record.

Ms. **Amelia**. One of the unique projects that I have been working on for the Comanche Tribe is the establishment of a Foster Care Review Board. That is the judicial review system that will address the assurances under 272, in terms of judicial review. Just recently, I met with Judge Alan Couch, who is an associate district judge in Norman, OK, and he also chairs the State Oversight Committee on Foster Care. Also present was the Department of Human Services. This was the offer made just last Friday.

With our project, if we were to enter into a State/Federal/tribal agreement, the State then would recognize our judicial review as the review system under 272. We are hoping to replicate this model throughout the State of Oklahoma and make it available to other States and tribes as well. We have applied for some coordinated discretionary funds just this fiscal year that are being considered.

The State has offered to the Oklahoma Indian Child Welfare Association that the State is interested in licensing the association to be the child placement agency for the State of Oklahoma. It was not sure how Judge Couch might agree with that, but that was perfectly acceptable. We are really experiencing a cooperative relationship. But when it comes down to contracting for funds to administer this child placement agency, that is another question. When you look to title 20 or the State's dollars or even title IV-B, we do not get that much of the State's allocation, but the State does not like it. They do not have title XX funds to contract out a lot of times, and it is really difficult to get access to this money.

Earlier, the bureau mentioned the alternative resource, looking possibly to title XX. It is not there. The other thing is, the social service block grants are not that accessible and are not used for child welfare purposes.

I believe that is all I have to say today. If you have any questions, I will be glad to answer them.

Mr. **Alexander**. We thank you. You have made an excellent witness, and thank you for traveling to Washington.

[Material submitted by Ms. Amelia follows. Testimony resumes on p. 133.]

TESTIMONY

Testimony of Bernard Kahrahrah, Chairman, Comanche Indian Tribe before the House Appropriations Committee on Interior and Related Agencies and Senate Appropriations Committee, February 22, 1984.

My name is Bernard Kahrahrah and I am Chairman of the Comanche Indian Tribe located in southwestern, Oklahoma. I thank you for the opportunity to present testimony on behalf of the Comanche Tribe to request supplemental funding in FY '85 for our Tribal Court and Child Welfare Programs.

The Comanche Indian Tribe has aggressively sought to fully exercise all aspects of its sovereignty. The Tribe has undertaken these efforts in a spirit of becoming a truly self-determinative government that manages its own affairs. Self-Determiniation poses a difficult challenge but reachable goal that is the touchstone of this administration's policy of encouraging tribes to develop the broad range of their sovereign powers. One of the eight (8) policy points of President Reagan's Indian Policy Statement of January, 1983 was to encourage tribes to assume responsibilities for services such as the enforcement of tribal laws, developing and managing tribal resources, providing health and social services, and education to their constituents.

To achieve the objectives of this Presidential policy, a tribe must establish its own financial base. Only in this way will the tribe be able to assume a greater financial role in the management of those programs now mostly funded by the federal government. The Comanche Tribe has aggressively instituted several economic initiatives to generate revenues which some day will be the sole tribal source in providing basic governmental services to our members. The development of our natural resources, specificially, oil and gas, was the most obvious for a western Oklahoma Tribe to first look to. Historically, our Comanche People have left it up to outside interest to develop their mineral resources, only receiving a small percentage of the profits in return. The Comanche Tribe created the Comanche Energy and Resource Company, Inc., (CERCO), an endeavour incorporated under tribal laws and 100% tribally owned and controlled, to address this problem. More importantly, its creation was a response to the need to generate revenues to provide basic governmental services to the Comanche People.

This Administration, through the BIA, has encouraged us to this end and has helped in the planned growth of our oil company. To make an effective entry into the free enterprise system, there are several issues which must be confronted. First, our tribal members must be educated about the purpose, goals and other issues of this corporate undertaking. Secondly, the Tribe must deal with the unquestioned need for a highly qualified professional and technical cadre to successfully execute the goals and objectives of CERCO. Tribal members are being trained to fill this role. Lastly, tribal government must provide a stable foundation upon which to build economic initiatives. This calls for providing a sound tribal legal system to protect the tribal shareholders, the company, as well as the financial interest of persons investing in the Comanche Tribe.

Federal assistance was imperative in the start-up stages of our Company. The Department of Health and Human Services, Administration for Native Americans (ANA), played a crucial role in providing grant monies which CERCO was able to leverage into increasing the value of company-owned properties into a ratio of 7 to 1 over the initial ANA investment. Similarly, the BIA provided grant funds to increase our tribal corporate assets over the initial ANA investment plus the

BIA Investment to a phenomental ratio to 14 to 1. As you can see, the investment by the federal government in the Comanche Tribe has proven to be a sound one.

Since its incorporation in July, 1983, CERCO has been consolidating its mineral acquisitions and developing efficient resource management programs to maximize the benefits to the Comanche People. But, like any corporation, CERCO is faced with liquidating the initial front end indebtedness before there are sizeable return to investors, the Comanche Tribe and its members. When these debts are payed off, then the federal government, as an investor, will begin to reap its benefits: The return of federal dollars to other need areas that were previously spent on the Comanche Tribe. Continued federal financial assistance is still needed. However, this federal help need not come in the form of grants, but in the form of guaranteed loans. Steps toward securing the success of CERCO will be taken once these federal guaranteed loans are made available to the Comanche Tribe. Loans of this type need to be available to other tribal business initiatives so that the Comanche Tribe will eventually hold its own in its partnership with the federal government and rely mainly on its own revenue generating sources to carry out its severeign duties and obligations.

I respectfully submit the following recommendation: Continue to make available federal dollars in the form of grants to economic initiatives which the Comanche Tribe is undertaking, such as those from BIA. Next, the federal government must make available guaranteed long-term capital loans. I will lead into two other very essential tribal programs which are interlocked to CERCO and other tribal economic initiatives.

The growing sophistication of the Comanche tribal government demands a court system to handle all criminal, civil and juvenile matters within tribal jurisdiction. On the basis of such a need, the Tribe established the Comanche Tribal Children's Court and reassumed juvenile jurisdiction from the CFR Court, Anadarko Agency on November 29, 1983. The Tribe plans very soon to reassume criminal and civil jurisdiciton as well.

A comprehensive tribal court of this magnitude does not exist in Oklahoma. The Comanche Tribe will be the first to address the establishment of an effective court system to administer justice where the land base and people are scattered over a wide area. This Court will play a crucial in fulfilling our Constitutional mandate to define, establish and safeguard the rights, powers and privileges of the tribe and its members. At this time, however, the Tribe is not able to be the sole source of funding such an important undertaking. It must, for the moment, look elsewhere.

Federal funding for tribal courts has always been in short supply. The lack of both tribal and federal funding for tribal courts is made more serious in light of state and federal case law defining "Indian Country" in Oklahoma over which the state has no jurisdiction. Ineffectual delivery of law enforcement and judicial services to "Indian Country" supports the argument that the state should have jurisdiction over such Indian trust lands. It is imperative that more federal funds be made available to the CFR Court, Anadarko Agency and to Oklahoma tribes setting up courts to thwart this possible erosion of tribal sovereign rights.

The Anadarko Area Office is responsible for providing court services through its CFR Court of Indian Offenses system to eighteen (18) tribes in its service area; all with an inadequate budget of $163,600 for FY'84. The Comanche Tribe is presently under the criminal and civil jurisdiction of the Court of Indian Offenses, Anadarko Agency along with seven (7) other tribes. Three of these tribes, the Kiowa, Comanche and Apache, possess over 200,000 acres of tribal lands and individual allotments. Total tribal membership of three tribes is estimated to be 18,000. The Comanche Tribe alone comprises 8,267 of this estimated figure: some 5,000 of its members residing in the local area. With this great number of acres and tribal population, the share of the BIA budget to administer court services to the seven (7) tribes under the Anadarko Agency is a mere $40,600.

It should be obvious that this level of funding is entirely inadequate to support even a minimal operation much less to provide funds to individual tribes who have the sovereign right and immediate need to handle their own judicial affairs. Originally, the CFR Court system in Oklahoma was intended to fill the interim need for judicial services as tribes developed their own courts or judicial consortiums. However, the CFR Court system needs to be adequately funded until tribes have made commitments, as the Comanche Tribe has, to gradually assume full responsibility for judicial and law and order services. Anandarko Area Office personnel have been extremely helpful to us in the preparation of this testimony and have stated that it needs a sum of $500,000 to properly administer justice to those eighteen (18) tribes under its jurisdiction. I respectfully request this amount to be provided as supplemental funds to the Anadarko Area Office to permit them to fulfill the federal trust responsibility to our Oklahoma Indians. I have attached a budget in the amount of $197,323.28 to this testimony and again request that these supplemental funds be awarded for Comanche Tribal Court operations. Our Court will serve as a unique model to other tribes desiring to initiate similar efforts.

This requested FY'85 tribal supplement will be used to fulfill the Tribe's constitutional obligation to its people while advancing the President's Indian Policy into a reality.

An essential court supportive service is the Comanche Tribal Child Welfare Program. This tribal program is also faced with limited Title II funds to meet the needs of our tribal youth as well as provide essential services to the Tribal Children's Court. The Indian Child Welfare Act, P.L. 95-608, as presently administered by the BIA Central Office and Anadarko Area Office, does not provide enough funding nor an appropriate grant application process to even approach an adequate funding level for effective tribal programs. Unfortunately, it is the philosophy of the BIA Anadarko Area Office to divide the area allocation among as many tribes as possible, thereby spreading the funds so thin that programs are limited in effectiveness. There have never been enough funds available to distribute according to Indian Child Welfare Act regulations basing tribal child welfare program funding levels on population and demonstrated need.

Confronted with inadequate funding to meet Title II needs in the Anadarko Area, the Area Office has discouraged tribes from requesting the maximum amount allowable under the funding formula, thus justifying proposed BIA reductions in Title II funds which only creates more unmet needs. Citing specific examples of limited funding for tribes in the Anadarko Area for Title II needs, nineteen (19) programs were funded by the BIA from an allocation of $634,805 in FY'81. In FY'82, eighteen (18) programs were funded with an increased amount of $672,000. Even with the increase, nine (9) programs were decreased and six (6) programs received a small increase resulting in an average grant of approximately $27,000.

Specific FY'83 funding allocations to the Anadarko Area Office were not made available to the Tribe after a proper written request. It is known, however, that the Comanche Tribe was awarded only $40,000 to provide Title II child Welfare services to a geographical service population of almost 5,000 tribal adequate funding for a host of program areas; develop children's codes; provide social services such as conuseling, parenting skills, foster care standards, recruitment of foster and adoptive families and payment for these services, and a system for intervention and transfer of Indian child custody cases to the tribal jurisdiction.

The need for increased funding for FY'85 to meet the Title II needs of our most valuable resource - Our Youth is evident: The Tribal Child Welfare Program handled over 200 cases in FY'83, 167 of which were alleged child neglect cases. If adequate federal funding were available and the funding formula was implemented in a proper and consistent manner, the Comanche Tribe would be eligible for up to $159,000 maximum to meet documented tribal needs.

In summary and as supported by this testimony in the name of the Comanche people, we request that Congress support these activities by providing the following:

1. Increase the economic initiative funds to be administered by the BIA and Department of Health and Human Services to provide sufficient funds allow optimum development of a project.
   A. Increase quaranteed loan funds
   B. Increase direct loan funds
   C. Increase economic development grant funds

2. Increase funding for BIA to establish technical assistance sources for the building of Tribal Corporations with Corporate arrangement and Corporate financing expertice.

3. Provide adequate funding to the Anadarko Area Office to assist tribes in developing and maintaining tribal courts. Appropriate $200,259.28 to the Comanche Tribe so that it may set-up a comprehensive tribal court system for those reasons stated above.

4. Increase overall funding to fully inplement the Congressional intent and spirit of P.L. 95-608, The Indian Child Welfare Act, and administer the distribution of program funds to tribes without relying on the competitive process which serves only to spread such funding too thin for program effectiveness. Specially, provide supplemental funding of $142,061 to fund a much-needed Tribal Child Welfare Program which has been heretofore been inadequately funded despite the Tribe's demonstrated need. Budgets and justifications for the Comanche Childrens' Court and Supportive Services are attached. Thank you for your consideration of this request.

COMANCHE TRIBAL COURT & SUPPORTIVE SERVICES
PROJECTED BUDGET 1984-85

Costs	Tribal Court	Child Welfare	Sub-Total
Personnel	$69,100.00	$50,916.00	$120,016.00
Fringe	10,620.00	10,183.00	41,803.00
Contractual	27,000.00	21,000.00	48,000.00
Travel	10,000.00	6,000.00	16,000.00
Equipment	5,700.00	4,500.00	10,200.00
Other	40,600.00	26,600.00	67,200.00
Total Direct Cost	163,020.00	119,199.00	282,219.00
Total Indirect Cost	37,239.28	22,862.00	60,101.28
Total Costs	$200,259.28	$142,061.00	$342,320.28

COMANCHE CHILDRENS COURT
FY 84-85
BUDGET JUSTIFICATION

PERSONNEL:

The Comanche Tribal Court will require, at the minimum, three full-time staff members and two part-time staff members. The Court Clerk, Prosecutor and Administrator will require full-time positions. The Court Investigator and the Probation Officer positions will probably require only part-time positions at least in the beginning. The salary rates are based on competitive norms for comparative positions in the area and also based on the salary wage scale developed by the tribe's Personnel Department as follows:

Salaries:

1 - Court Clerk	$16,500.00
1 - Prosecutor	17,000.00
1 - Court Administrator/Planner	19,600.00
1 - Court Investigator (Part-time)	8,000.00
1 - Probation Officer (Part-time)	8,000.00

FRINGE BENEFITS:

The rate set by the Tribe is computed at 20% of salaries. Fringe Benefits are itemized as follows:

Benefits:

Employer's share of FICA	6.70%
State Unemployment	3.10%
Federal Unemployment	.70%
Health, Life, Income Protection	6.78%
Workman's Compensation	2.22%
Pension	.50%

Fringe Benefits only apply to full-time employees.

CONTRACTUAL:

The contractual budget encompasses four (4) separate services for the Court. The Judges are compensated for their services at $50 per hour plus mileage at 20¢ per mile. The amount budgeted will allow payment for approximately 110 hours. Judges are required to meet once a month for Judicial Review meetings to discuss the month's caseload, discuss other court activities, and to develop court rules and identify necessary revisions in the tribal codes. Because the Tribe does not have its own jailing facility, this service will have to be contracted with local county and city jails. We estimate this expense at $15.00 per day times 200 days with the average sentence at 4 days times 50 offenders. Two consultants will be hired to assist the Court Administrator/Planner in the drafting of the civil and criminal codes.

TRAVEL/TRAINING:

The Comanche Tribal Court will hire the best qualified personnel to fill the staff positions. However, most people do not fully understand the complex and unique challenges that the tribal courts must undertake. Therefore, the Court will provide training the staff to keep abreast of any new developments in Indian Law. It will be necessary to participate in these types of training program which address specific Indian Law principles through the National American Indian Court Judges Association, National Indian Justice Center and the American Indian Lawyer Training Program. These organizations provide training for tribal court personnel and suggest different methods and techniques to upgrade the court services in order to efficiently serve tribal members. It is estimated that each staff member will require two training programs specifically addressing the duties and responsibilities of their respective positions. This expense is estimated at 5 staff persons times $800.00 (roundtrip airfare, per diem and registration fees). Local travel will compensate all on duty trips required by the staff, especially the Probation Officer/Counselor and the Court Investigator. Local travel will also pay mileage for staff to participate in meetings with state, county, local and other tribal agencies to coordinate services provided by each one. Further, there are many seminars and workshops which are locally available and which can provide information for the delivery of court services and the needs of children, families, etc. which are not being met. This expense is estimated at 20¢ per mile times 4 staff persons times 2,500 miles.

EQUIPMENT:

Because there are three new positions created it will be necessary to purchase desks and chairs to accomodate them. We will also need another typewriter to accomodate the extra work load. Two calculators will be purchased and two filing cabinets will be purchased to hold each employee's respective case files which are pertinent to their job functions.

OTHER:

This cost category includes the cost of renting an office for staff (1,300 sq. ft. @ $8.00 per sq. ft.). The telephone line item is budgeted at an estimated cost of $500.00 per month which attempts to include the new hike in telephone service. Postage was estimated at $125.00 per month. The utilities line item will include rent on office space and the Court's share of electric, gas, etc. bills. Supplies are estimated at 4 persons times $50.00 per month. Printing and duplications costs include the printing of court forms, stationary, codes and court rules manual. Duplication will pay to the Tribe the court's share of the use of the duplication machine. Law books, periodical publications will provide a library for the Court and others to utilize. A complete set of the United States Code Annotated will provide the Court with a comprehensice reference tool. Other periodicals such as the American Indian Law Review and the American Indian Law Reporter will provide the Court with information on Indian case law which is currently being litigated.

This propsed budget reflects only the first year's start up costs for the criminal and civil courts. The Comanche Indian Tribe projects that within four years, the Tribe can sufficiently fund the operation of the court system entirely on tribal funds.

COMANCHE COURT SUPPORTIVE SERVICES
CHILD WELFARE PROGRAM
FY 84-85
BUDGET JUSTIFICATION

PERSONNEL:

The employees of the Comanche Child Welfare Program will follow the Tribe's personnel department hiring and employment regulated practives and personnel policies and procedures of the Comanche Indian Tribe which incorporates a grade/step system of merit pay increases and a salary range for various levels of employment. Salaries are established based upon requirements of the individual position and are comparable to other similiar types of positions within organization and are as follows:

Salaries:

1 - Human Services Manager/ICWA Director (20% time @ $19,580 per year)	$3,916
1 - Child Protection Worker	16,500
1 - Human Service/Child Welfare Program Analyst	18,500
1 - Intake Clerk/Statistician	12,000

FRINGE:

The fringe benefit rate for the Comanche Indian Tribe is 20%. This rate is calculated as follows:

Employers Share of FICA	6.70%
Group Health, & Life Insurance	5.30%
State Unemployment	3.25%
Workmen's Compensation	2.25%
Pension	2.50%
	20.00%

Health and life insurance are carried through Pueblo's Insurance Company.

CONTRACTUAL:

This item will be utlized to contract professional services to instruct staff and volunteers as to relevant legislation or other areas in which employees lack skills such as identification and investigation of alledged child abuse and neglect, report writing, data collection for information/tracking system, etc. Further, necessary professional services for children/families in need of special treatment on case-by-case basis. This line includes items such as consultant travel.

TRAVEL/TRAINING:

Expenses for travel include in/out state trips for staff personnel, and volunteer staff to attend national and regional child welfare conferences and training seminars. Local travel will include the Oklahoma Indian Child Welfare Association quarterly meetings; Southern Plains Child Welfare Protection Team monthly meetings; and other related child wefare meetings. Local travel also will pay mileage for the purpose of home visits and travel necessary to provide direct services to child welfare clientele. Per diem expenses shall be consistent with tribal travel policies, plus toll fees, parking fees, and 20¢ per mile travel reimbursement. Also, included in the travel line item is mileage payments to Foster Care Review Board (FCRB) members, who will meet as often as appropriate to conduct judical care reviews of children placed in foster care and other related purposes. (The FCRB are considered volunteer staff, however, mileage is reimburseable).

EQUIPMENT:

Because of the additional staff, it will be necessary to purchase an extra typewriter for the Child Welfare program. The program will also have access to data programming computer and software must be purchased to operate and utilize the machine. Equipment such as tape recorders, overhead projectors, file cabinets, etc., will be rented when necessary or purchased by the program as they are needed for program growth in terms of training.

OTHER:

This cost category includes the cost of renting an office for staff (1,300 sq. ft. @ $8.00 per sq. ft.). The cost for telephone is computed at $200 per month times 12 months equals $2,400. Printing and reproduction costs are needed to print training materials and public information on the program; also, staff copy machine costs are included here. Postage was computed at $100 per month because the program will be mailing letters to clients and other material for educational purposes. Equipment maintenance will be for servicing the copy machine, typewriter and other office equipment as needed. Utilities were computed at $50 per month. Monthly newspaper and television public awareness spots will be utilized in encouraging participation in the program, especially the foster care networking program. Training costs are for training staff both on site training, as well as, training of the FCRB. The expenses for supplies for the program year will be $1,200. This cost represents the month-by-month office expenses for materials.

Senate Joint Resolution No. 27

RESOLUTION CHAPTER 17

Senate Joint Resolution No. 27—Relative to federal funds for American Indian child welfare service programs.

[Filed with Secretary of State March 20, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

SJR 27, Keene. American Indian child welfare service programs.

This measure would memorialize the President and the Congress of the United States to increase the appropriation for Title II of the Indian Child Welfare Act of 1978 to $12 million, to continue funding of all Title II programs both on and off the reservation, and to restore to this state an equitable share of Title II funds based upon population and need.

WHEREAS, Title II of the federal Indian Child Welfare Act of 1978 (Public Law 95-608) authorized the United States Secretary of the Interior to make grants to Indian tribes and organizations for the establishment and operation of Indian child and family service programs; and

WHEREAS, More than 201,000 American Indians, a larger number than in any other state, are residents of California, and the state includes approximately 82 federally recognized Indian tribes; and

WHEREAS, California's share of funds made available under Title II of the Indian Child Welfare Act has substantially decreased over the past three fiscal years; and in fiscal year 1982 the allocation of these funds to Indian people in California was decreased by 40 percent when the total appropriation for the act was only decreased by 4 percent; and

WHEREAS, In fiscal year 1984 California's appropriation was again decreased, and in fiscal year 1985 the United States Bureau of Indian Affairs is proposing to further reduce funding despite the documented need for the program services provided by the federal act; and

WHEREAS, This decrease is based on the decision to discontinue the provisions of grants to off-reservation programs, although these programs are important to urban as well as to rural residents because other services are not tailored to the special needs of Indians; and

WHEREAS, The United States Senate Select Committee on Indian Affairs, pursuant to the Congressional Budget Act of 1974, has recommended that the Indian Child Welfare Program be continued both on and off the reservation with an increase in funding from the present $8.7 million to $12 million; and

WHEREAS, To again reduce California's allocations of funds under Title II would result in the loss of important child welfare and social services and inflict a serious injustice on the Indian population of this state; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to increase the appropriation for Title II of the Indian Child Welfare Act of 1978 to $12 million as recommended by the Senate Select Committee on Indian Affairs, in order to more adequately meet the needs of American Indians in California and throughout the nation, and to continue funding of all Title II programs both on and off the reservation; and be it further

Resolved, That the President and the Congress of the United States direct the Bureau of Indian Affairs to restore to the Indian people in California an equitable share of funding under Title II based upon population and need and that supplemental hearings be held to increase California's allocation of Title II funds for fiscal year 1985; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

Mr. ALEXANDER. Our next witness is Melvin Sampson, chairman of the Legislative Committee and Tribal Council member of the Yakima Indian Nation.

STATEMENT OF MELVIN SAMPSON, CHAIRMAN, LEGISLATIVE COMMITTEE, AND MEMBER OF THE TRIBAL COUNCIL, YAKIMA INDIAN NATION, TOPPENISH, WA

Mr. SAMPSON. Good afternoon. My name is Mel Sampson and, as stated, I am a member of the Yakima Indian Nation and chairman of the legislative committee of the Yakima Tribal Council. We appreciate the opportunity, on behalf of the tribe, to present our concerns in reference to the Indian Child Welfare Act. I will proceed to try to summarize our concerns.

Since the enactment of the legislation, we feel that its most important and positive aspect has been productive interactions brought about between the tribal and State governments, which have been historically uncommon. The act has provided a framework for advancing cooperation between States and tribes in the delivery of Indian child welfare services by assigning definite roles to the tribes, the States and Federal agencies.

To complement that, Washington State now has a special administrative code with requirements concerning Indian child welfare which State agencies must follow in dealing with Indian child welfare cases. The State of Washington has legislatively recognized that the purpose of the Indian Child Welfare Act is to prevent the unwarranted breakup of Indian families and to give tribal governments substantial authority in determining Indian child custody matters.

I would like to quote from one of the regional agencies. They stated:

> The single most important aspect of the current Indian Child Welfare Act has been the creation of local Indian child welfare advisory committees. Officers with the active committees find that communications and planning for Indian children has been greatly enhanced through the committee activity.

A portion of another quote is:

> The Indian Child Welfare Act is, in and of itself, viewed as a positive move to protect the best interest of the Indian child and his or her unique culture and heritage.

The development of these attitudes on the part of the State agencies would never have occurred without the enactment of the Indian Child Welfare Act. Despite this important breakthrough in tribal and State cooperation, the intent of the law is far from achieving its purpose. Since the enactment of Public Law 95-708, its most negative aspect has been a lack of adequate congressional appropriations.

Indian child welfare needs were startingly illustrated and overwhelmingly evidenced when the presentations were made in Congress 6 years ago. The needs have not changed. Currently, our tribe operates a children's and families' services unit that has been in operation since 1973 and part of this unit's function is to act as a licensing and foster care placement agency. Our staff has an active caseload that fluctuates between 45 and 50 children per month. In addition, the tribe has a children's court. The tribe has had to piece together the services by combining limited tribal, Federal, and State funds. We have had to prioritize our children's and families' services because of the lack of resources.

To illustrate the problems that we are experiencing due to a lack of resources, our staff participates in weekly case reviews conducted by the local department of social and health services, which is a State agency. On the average, two to four child welfare cases are reviewed. Of these cases, the tribe is able to assume custody of only one to two cases per month. The tribe does not have the resources to assume custody of all of its children, and conservatively, from just our local area alone, the Yakima Tribe has to turn down custody for a minimum of 156 dependent children per year.

Our tribe is put in the precarious position of deciding which child welfare case it will accept or reject. In addition, the process for receiving what limited Indian child welfare funds that are available, a competitive process is utilized. Therefore, tribes cannot depend on a continuity of programming.

The concern for adequate resources is shared by the State of Washington. They state:

> One of the most difficult barriers we find to full implementation of the intent of the Act is the shortage of funding for the Indian Child Family and Service program as described in section 201.

A member of the State attorney general's office also states that the intent and spirit of the Indian Child Welfare Act is to have Indian children remain with Indian people. A basic concern I have, as do others in my office who work with the Indian Child Welfare Act, is that the lack of funding to tribes serves to undercut the tribes' and the State's ability to carry out the purpose of the act. These shared concerns on the part of the State officers are significant and representative.

The Yakima Indian Nation strongly recommends that funding sufficient for program development and maintenance be appropriated.

There are other issues that concern the tribe, and I would like to address briefly, if I may, two more. No. 1, the notification and compliance. Whether or not notice on foster care placement and termination of parental rights was provided in a proper and timely fashion, the tribes should be monitored by the Bureau of Indian Affairs or another identified agency or group. Again, I refer to a quote that I will not read here, but it is attached to our testimony.

Our tribe is aware that the public and private agencies are not complying with the Indian Child Welfare Act. There needs to be controls for compliance on these agencies, and again I refer to the State's concern as well. They state, "There are still too many Indian children being placed in non-Indian homes, and perhaps it would improve if the law had a stronger way to compel that the law be followed."

Indian cases serviced by private agencies is another area of concern. There have been a number of instances of noncompliance by private agencies. Presently, there is not a system to monitor private agencies. A legally mandated system of monitoring needs to be considered. So we, therefore, recommend that a method for monitoring compliance be established.

No. 2, we address expert witnesses. A definition for "expert witness" should be included in the act. An expert witness should be required to be knowledgeable about the Indian Child Welfare Act and possess a cultural awareness of the tribe that is involved. It is recommended that the definition included in the BIA guidelines for State courts be adopted, and we have a copy of that attached to our testimony.

The Yakima Indian Nation further realizes that there are other important concerns with the act which have to do with juvenile justice, inheritance, voluntary adoptions, and adoption penalties. However, the focus of our testimony has been on the critical funding issue. This issue overrides all other concerns. Without an adequate and reliable funding base, other changes and/or amendments to the act will not help our tribe to assume total and exclusive jurisdiction over all Indian children welfare matters for our tribal members.

That concludes my statement.

Mr. **Alexander**. Could you tell me what it costs to maintain the program that you are currently operating?

Mr. **Sampson**. Let me cover that in two phases. First of all, the amount that we received this fiscal year, via competition for the Indian child welfare funds, was $30,000. Our original request was $242,000 to operate it. This year, we submitted a request for $50,000, which does not represent our total needs because there is no need to ask for something that is not there, but then we did not considered this year for even $50,000. So we are utilizing from IPA some people assigned, and we are utilizing some tribal resources, plus some reimbursements from the State. I do not have the exact figure of the reduced program that we have, but I can provide that with a break out of each resource that we are currently utilizing.

Mr. **Alexander**. The $242,000 that you mentioned, which was last year's request, if that were the level of your funding, would that enable you to pick up the children that were referred each month?

Mr. **Sampson**. No, it would not, because we do not have a receiving home. We currently have 15 foster homes, but we do not have a permanent facility for receiving-home purposes. Consequently, we have to refer all of those referrals to the State system because we do not have a physical facility that we operate.

Mr. **Alexander**. So, in addition to the operating funds, you need capital funds?

Mr. **Sampson**. Right.

Mr. **Alexander**. Do you get any money from ANA,

Mr. **Sampson**. Not for this purpose.

Mr. **Alexander**. You mentioned that you meet on a monthly basis, at least some tribal personnel do, with the county system to review children. Do you have any other workings with the county that are either positive or problems with respect to getting referrals?

Mr. **Sampson**. We have an agreement with the State that we executed a little over a year ago. We are currently in the process of reviewing that and updating it with some proposed changes that are going to be recommended. That would be considered a plus factor.

As we state in our testimony, we are having problems getting concurrences from some of the judges, referring known Indian cases that might be to our tribal program. We recommend that State court judges receive training in reference to updating themselves with the act. We feel that it is not adequate.

Mr. **Alexander**. You mentioned some State reimbursements for the program you are operating. What is the level of funding, if any, that you receive from the States?

Mr. **Sampson**. I cannot answer that, but I can provide you that information.

Mr. **Alexander**. With respect to foster care, does the BIA provide funding for the foster-care operation that you maintain?

Mr. **Sampson**. No.

Mr. **Alexander**. Does the State provide any funding for the foster-care operation?

Mr. **Sampson**. Through our licensed foster care, yes. They will not do it unless you are foster care. Our home is licensed by the State. We did make some inroads in reference to that. They certify and license our homes after we do the review and inquiry on them, as far as what we feel is adequate. So they are not as stringent in our situations. What is good for an Indian is not always the necessary—you do not necessarily have to comply with the State rules and regulations.

Mr. **Alexander**. These are foster-care situations, where the State provides fundings. Are these placements by the State court system or by the Yakima court system?

Mr. **Sampson**. Both.

Mr. **Alexander**. Thank you. We have a question from Senator Gorton. Are you aware of any problems at Yakima with respect to mixed-blood marriages and exclusive jurisdiction of the tribal court over custody?

Mr. **Sampson**. When you say "mixed-blood," you are talking about our tribal members——

Mr. **Alexander**. Tribal versus non-tribal, non-Indian.

Mr. **Sampson**. When you say "problem," that does exist, without doubt. That almost becomes a perpetual question. In some cases, the mixed marriage depends upon our enrollment procedure. If they meet the maximum blood quantum of one quota of Yakima blood, they are eligible for enrollment. But probably the situation becomes compounded if they conceivably may be more than a quota Indian, but they may not be a quota Yakima but they may be a half or more, then that is where we come into some problems. That is a concern that is shared universally. How does the State court system know how to identify these, and I think some of the previous testimony and some you will hear today will reference that universal definition of what constitutes and Indian. That is an age-old issue. If you can answer it here, I will have to congratulate you. It varies between tribes as far as the eligibility criteria for enrollment. In our situation, it is a quota. So then you get into the decendancy issue.

Mr. **Alexander**. Thank you. We appreciate your testimony.

[The prepared statement follows:]

PREPARED STATEMENT OF MELVIN SAMPSON, CHAIRMAN, LEGISLATIVE COMMITTEE, YAKIMA TRIBAL COUNCIL

Good morning, Mr. Chairman and members of the Senate Select Committee on Indian Affairs. My name is Melvin Sampson. I am an enrolled member of the Yakima Indian Tribe and an elected member of the Yakima Tribal Council. I am, also the Chairman of the Tribe's Legislative Committee. Our Tribe is a federally recognized tribe established by treaty in 1855. Our reservation is located in South-Central Washington. On behalf of the Tribe, I would like to thank the Committee for the opportunity to present testimony on the Indian Child Welfare Act of 1978, [I.C.W.A.] P.L. 95-608.

Let me begin by stating that the Yakima Indian Nation was very active in pursuing the passage of this legislation which has had a major impact on State policy in regard to how Indian child welfare cases are handled. Our Tribe joined with other tribes and Indian organizations to convince Congress that this legislation was needed to prevent abusive practices in the removal of Indian children from their parents. Congress heard testimony from several hundred witnesses in hearings conducted from 1974 to 1977 and reviewed reports of the American Indian Policy Review Commission. The enactment of the I.C.W.A. was a direct result of our outcry that Indian children were being lost to non-Indian foster and adoptive homes at an alarmingly disproportionate rate.

Since enactment of this legislation its most important, positive aspect has been productive interactions brought about between tribal and state governments which have been historically uncommon. The Act has provided a framework for advancing cooperation between states and tribes in the delivery of Indian child welfare services by assigning definite roles to tribes, states and federal agencies.

Washington State now has a special Washington Administrative Code, requirements concerning Indian Child Welfare, which state agencies must follow when dealing with Indian child welfare cases. The State of Washington has legislatively recognized that the purpose of the I.C.W.A. is to prevent the unwarrented breakup of Indian families and to give tribal governments substantial authority in determining Indian child custody matters. To illustrate the extensive impact of the Act and the Washington Administrative Code, the following are quotes from letters prepared from four regional district Department of Social and Health Services Offices in regard to the I.C.W.A. These responses were solicited by the State Office of Indian Affairs who requested input on recommendations related to amendments to the Act:

"The single most important aspect of the current Indian Child Welfare Act has been the creation of Local Indian Child Welfare Advisory Committees. Offices with active committees find that communications and planning for Indian children has been greatly enhanced through committee activity."

"Placement and custodial requirements set forth in the act have brought about greater awareness on the part of non-Indian DSHS staff of the special needs of Indian children entering the social service system. Through information and committee activity the department is better equipped to address those needs."

"The Indian Child Welfare Act is, in and of itself, viewed as a positive move to protect the best interests of the Indian child and his/her unique culture and heritage. Certainly it has heightened awareness in our communities for both Indian and non-Indian people and has improved Department child welfare services to children and their families."

"The Indian Child Welfare Act is vital to the preservation of Indian families and we look forward to continued coordinated efforts in assuring its implementation."

The full text of their responses and recommendations in regard to the Act is included in the appendices section of this testimony.[1] We strongly suggest review of their recommendations which parallel tribal concerns in many respects.

The development of these attitudes on the part of the State agencies would never have occurred without the Indian Child Welfare Act. Again, this is the Act's most important, positive aspect to date.

Despite this important breakthrough in tribal/state cooperation, the intent of the law is far from achieving its purpose. Since enactment of P.L. 95-708, its most negative aspect has been a lack of adequate congressional appropriations. No matter how well-intentioned the purpose of this law, it is an empty gesture without adequate funding to implement and carryout its purpose. Six years after the passage of this Act, securing adequate funding is the next serious obstacle tribes must overcome. Indian Child welfare needs were startlingly illustrated and overwhelming evidence was presented to Congress six years ago. The needs haven't changed. However, without tribal program development and maintenance funds expansion of existing systems or development of new systems isn't feasible.

---

[1] See Appendix, material submitted by Don Milligan, MSW, Indian Affairs Section, Department of Social and Health Services, State of Washington, attachment No. 5, p. 406.

Currently our Tribe operates a Children's and Family Services Unit. It has been in operation since 1973. Part of this unit's function is to act as a licensing and fostercare placement agency. Our staff has an active case load that fluctuates between 45-50 children per month. In addition, the Tribe has a Children's Court. The services the Yakima Tribe provides through these two systems are by no means comprehensive or sufficient to meet our needs. The Tribe has had to piece together the services by combining limited tribal, Federal and State funds. We have had to prioritize our children's and family services.

To illustrate the problems the tribe is experiencing due to a lack of resources, our staff participates in weekly case reviews conducted by the local Department of Social and Health Services Office. On the average two to four Indian child welfare cases are reviewed. Of these cases, the Tribe is able to assume custody of only one to two cases per month. The Tribe does not have the resources to assume custody for all of its children. Conservatively, from just our local area alone, the Yakima Tribe is having to turn down custody for a minimum of one hundred-fifty-six dependent children per year. This estimate does not include those children who are turned away from other regions in the state and-or by our court system. This example illustrates the severity of the dilemma caused by inadequate funding. Even though the Yakima Tribe has exclusive jurisdiction, it has no means to fully respond to the over-all Indian Child Welfare needs. Our Tribe is put in the precarious position of deciding which child welfare cases it will accept or reject.

In addition, the process for receiving what limited I.C.W.A. funds that are available, a competitive process is utilized, therefore, tribes can't depend on a continuity of programming. To compound the issues, the B.I.A.'s programs have received repeated funding reductions leaving only token programming funds for the added responsibility that this Act represents.

The concern for adequate resources is shared by the State of Washington as is evidenced in their letters included as part of this testimony. I quote from the letter from the Regional Administrator in our area whose response is representative of other regional state officials:

"One of the most difficult barriers we find to full implementation of the intent of the Act is the shortage of funding for the Indian Child and Family Service Program as described in Section 201. As you know, although the Yakima Tribe has exclusive jurisdiction, the child and family program is not fully funded. This situation leads to frustrated expectations for both tribal members and other community agencies, as well as leaving the department to provide services to a number of Indian children and families, who, given adequate funding, could be served by their tribal program instead."

A member of the State Office of the Attorney General's staff expressed similar concerns in her letter of January 17, 1984. (See Appendices)

"The intent and spirit of the Indian Child Welfare Act is to have Indian Children remain with Indian people. A basic concern that I have as do others in my office who work with the I.C.W.A., is that the lack of funding to tribes serves to undercut the tribes; (and the State's) ability to carry out the purpose of the Act."

These shared concerns on the part of State Offices are significant and representative. The problem for not carrying out the purpose of the law is recognized by the State as one of a lack of funds. Our State recognizes that with adequate funding tribes will be able to provide child welfare services competently. We need desperately to develop our social service programs for children and families and expand our judicial system.

The Yakima Indian Nation strongly recommends that funding sufficient for program development and maintenance be appropriated. Funding to the tribes should be on an entitlement basis and not competitive.

There are other issues of concern that the Yakima Indian Nation shares in common with other tribes. Since these tribes will be speaking to those issues in their presentations the balance of our testimony will briefly address two other areas of concerns:

1. Notification/Compliance—Whether or not notice on foster care placement and termination of parental rights was provided in a proper and timely fashion to tribes should be monitored by the Bureau of Indian Affairs or another identified agency or group. This issue of compliance regarding notification is corroborated by State agencies. One quote from a State office (see appendix) illustrates the severity of concern:

"Several obstacles have been encountered in following the mandates of the Act, and in enforcing the policies set forth in WAC. Specifically, Judges in King County appear to lack understanding of the Act. There is general lack of recognition for the unique political and cultural status of Indian people. Court decisions have been rendered which have gone against the intent of the Act. Bad precedents have been set for future cases (e.g. maintaining Indian children in non-Indian placements when family or Indian resources were available). It's recommended training be made mandatory for Judges who preside over Indian Child Welfare cases."

Our Tribe is aware that public and private agencies are not complying with the Indian Child Welfare Act. There needs to be controls for compliance on these agencies. Again, our State has expressed these same concerns:

"There are still too many Indian children being placed in non-Indian homes and perhaps it would improve if the law had a stronger way to compel that the law be followed."

"Indian cases serviced by private agencies is another area of concern. There have been a number of instances of non-compliance by private agencies. Presently, there is not a system to monitor private agencies. Region 4 DDHS and the LICWAC have sought to establish informal agreements with the various private agencies to staff their Indian cases. Unfortunately there has been a number of problems. A legally mandated system of monitoring needs to be considered."

The Yakima Tribe recommends that a method for monitoring and compliance be established.

2. Expert Witness—A definition for expert witnesses should be included in the Act. An expert witness should be required to be knowledgeable about the I.C.W.A. and possess a cultural awareness about the tribe involved. It is recommended that the definition included in the B.I.A.'s guidelines for State Courts be adopted, see Appendices for excerpt of the guideline.

The Yakima Indian Nation realizes that there are other important concerns with the Act which have to do with juvenile justice, inheritance, voluntary adoptions, and adoption penalties. However, the focus of our testimony has been on the critical funding issue. This issue overrides all other concerns. Without an adequate and reliable funding base, other changes and/or amendments to the Act will not help our Tribe to assume total and exclusive jurisdiction over all Indian child welfare matters for our tribal members.

As Indian people, united on this issue of Indian child welfare, we present our case on a National tragedy. The Yakima Indian Nation maintains that our cause was presented with overwhelming evidence and justification six years ago. This Act, without proper appropriations, is now adding to the problems evidenced six years ago, by causing manifold complications resulting from Tribes trying to handle cases when there are not adequate social services and judicial systems to ensure proper care and due process for Indian children.

Our most valuable resource is our human resource . . . our children. The tradition of the Yakima Indian Nation considers its children its primary resources for providing the link between generations, the carriers of tradition and culture and for ensuring that the Tribal Family continues to exist.

Mr. ALEXANDER. We are going to take a 5-minute break, and we will be right back, starting with the chief judge from the Sisseton-Wahpeton Tribal Court, Lorraine Rousseau.

[Recess taken.]

Is Judge Rousseau here?

Is Marie Starr, from the Muckleshoot Tribe here?

STATEMENT OF MARIE STARR, GROUP HOME DIRECTOR, AND MEMBER OF THE TRIBAL COUNCIL, MUCKLESHOOT INDIAN TRIBE, AUBURN, WA

Ms. STARR. Good morning. My name is Marie Starr, and I am the director for the Muckleshoot Tribal Group Home. We are the only certified Indian youth home in the State of Washington, and I am also a member of the Muckleshoot Tribal Council. I am here to address the Indian Child Welfare Act, Public Law 95-608, and I am requesting that my written testimony submitted to the Senate Select Committee on Indian Affairs be incorporated as part of the record.

Mr. **Alexander**. It will be. We will take your whole statement for the record, and we would appreciate your summarizing it, hitting the high points in your oral testimony.

Ms. **Starr**. In meeting our obligations as the only federally-recognized Indian tribe in King County, the Muckleshoot Indian Tribe has used the Indian child welfare and other resources to operate the Muckleshoot Youth Home since 1979. Currently, the home is the sole State-certified Indian group home facility in the State of Washington. The youth home provides temporary shelter and care for Indian children, ages 0 to 17, as well as counseling and treatment services to their family. The home is maintained to preserve the integrity of the Indian family as a cohesive unit.

As the only State-certified Indian facility, the Muckleshoot Youth Home serves a vital linkage in the overall Indian child welare efforts in Puget Sound and for the entire region. Through the home, Muckleshoot has satisfied many and varied requirements to effectively provide culturally relevant group care to Indian children and families. There requirements include reassumption of exclusive jurisdiction in Indian child welfare matters; the adoption of the tribal juvenile code, State-approved, foster-care placement and licensing procedures, access to tribal legal system; coordination with private, State, and intertribal service providers; and certification of the group-care facility itself.

The home's 5-year operational record clearly established that it is a unique and primary vehicle for addressing the social service problems impacting the Indian populations to be served.

The Indian tribes throughout the United States worked diligently for years for the protection of our children, the most valuable human resource of our tribe. The U.S. Congress recognized this Indian child protection issue in 1978, when the Indian Child Welfare Act, Public Law 95-608, was enacted. However, there are many critical issues causing major Indian child custody conflicts. I am just going to go through some of the recommendations that the tribe has.

Provisions need to be incorporated that authorize that the definition of "Indian" shall be consistent with the respective reservation's definition of "Indian" and shall include a provision authorizing Canadian Indians as qualified participants, consistent with the legal language contained in the Jay Treaty between the United States and Canada on Indians.

Inclusion of provisions that encourage tribe and State agreements for effective intervention for tribal court jurisdiction for all Indian children, including juvenile justice issues, and mandate that the State child welfare agencies provide resources to Indian children, particularly in Public Law 280 State. Tribal 280 States have assumed jurisdiction over many criminal issues which occur on reservations. The only means to access juvenile justice facilities for juvenile offenders is through the State court system. The tribe would like to have the opportunity to work with the State of Washington, whereby the tribe could retain jurisdiction over juveniles in both civil and criminal areas and be able to utilize the State facility for treatment.

This process would give the tribes jurisdiction over their youths without having to duplicate the costly treatment facilities already in operation through the State system.

Provisions need to be incorporated that specifically provide for the Indian child service population, preventative programs, married-on successive programs, prioritized budget for federally recognized tribes, providing technical assistance to projects, and guarantee a 3-year funding cycle for demonstrated successful programs for Public Law 95-608.

Include provisions that mandate Federal, State, private, and tribal agencies to immediately notify tribes where Indian children are involved in voluntary and involuntary child placement cases. Upon this immediate notification, the child's tribes need provision to obtain legal access to the child's full name, birth date, tribal affiliation, social history, case plan, domestic relations, and ensure that the child's tribe will abide by all of the confidentiality standards as required by the law to ensure that the child's best welfare protection and placement is implemented in each respective case.

Include provisions in title II, section 20.1(a)(3) to exercise the Indian right of biracial children who choose to be Indian, regardless of whether the child is enrolled in a tribe or not, when one of the parents is legally recognized as an Indian and provide a legal mandate in this provision that all child placement agencies ensure the Indian child's Federal trust inheritance and rights are guaranteed as an Indian, consistent with 25 CFR regulations.

Include provisions that guarantee the qualified expert witness utilized within the Indian child-placement cases obtain not only the professional expertise but is also the expert in Indian custom, tradition, laws, and is legally authorized to represent the Indian child by the child's tribe.

One of the other things that we do not have within our testimony is the review process of the Indian child welfare grant applications. I will have that in writing and sent to you to be included as part of the testimony.

The Muckelshoot Tribal Youth Home has served 162 Indian youth and 850 family members between 1979 and 1983 from the Northwest States of Washington, Oregon, Idaho, Alaska, and other States upon request to the tribal group home. The tribe has the only certified Indian group home in the State of Washington and has gained credibility from both reservation tribal youth service agencies, as well as State child placement agencies as a valuable child resource.

An area of concern which the tribe noted that has not been adequately addressed in Public law 95-608 is the issue of Federal trust obligations, including medical education and Federal obligations for Indian children. Tribal child welfare workers have found that many children have lost and continue to lose benefits due to them as tribal members or as Indians because of uninformed workers for private and State agencies, due to tribal enrollment procedures, a lack of expertise in BIA and tribal regulations concerning birth and placement.

By covering these trust responsibilities in the act, the Federal Government will be responsible for guaranteeing that the treaty obligations are met. The Indian children and extended Indian families have been grossly violated by law and child placement agencies that are not expert or professionally trained in Indian customs, traditions, and law. This has caused the Indian child to experience confusion and often suffer irreparable damage, mental stability, and property loss. Effective Indian child placement agencies serve as professional and expert resources for our children. The U.S. Congress needs to guarantee the same child protective services and rights to Indian children that are guaranteed to other children in this Nation. But more importantly, the Government, as our tribal fiduciary trust agency, needs to protect these children's special legal trust obligations.

Thank you for taking the time to allow me to testify for the Indian Child Welfare Act, Public Law 95-608.

Mr. **Alexander**. Thank you for your testimony.

I might mention at this point that we are going to keep the record open on this hearing for what, for us, is a long period of time, which will be 30 days, because we have requested a number of tribes and States for written comments. So if you have addenda, as you mentioned in your testimony, that you would like to submit, we will be keeping the record open for 30 days. Thank you for coming, and we appreciate your testimony.

[The prepared statement and accompanying material follow. Testimony resumes on p. 153.]

MUCKLESHOOT TRIBAL COUNCIL
39015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 - (206) 939-3311

TESTIMONY
INDIAN CHILD WELFARE ACT, PUBLIC LAW 608

INTRODUCTION

My name is Marie Starr, I am the Director for the Muckleshoot Tribal Group Home, the only certified Indian Youth Home in the State of Washington and I am a Muckleshoot Tribal Council Member. I am here to address the Indian Child Welfare Act, P.L. 608 and requesting that my written testimony submitted to the Senate Select Committee be incorporated as a part of the Congressional records.

PROBLEM

Indian Tribes throughout the U.S. have worked diligently for years for the protection of our children, the most valuable human resource for the Tribes. The U.S. Congress recognized this Indian Child Protection issue in 1978 when the Indian Child Welfare Act, P.L. 608 was enacted. However, there are many critical issues causing major national Indian Child custodial conflicts.

RECOMMENDATIONS

1. Provisions need to be incorporated that authorize the definition of Indian shall be consistent with respective reservations definition of Indian and shall include a provision authorizaing Canadian Indian children as qualified participants consistent with the legal language contained in the Jay Treaty between the U.S. and Canada on Indians.
2. Inclusion of provisions that encourage State-Tribal agreements for effective intervention for Tribal Court jurisdiction for all Indian children including Juvenile Justice issues and mandate that State Child Welfare Agencies provide resources to Indian children, particularly in P.L. 280 States.

   Tribal 280 States has assumed jurisdiction over many criminal issues which occur on Reservations. The only means to access juvenile justice facilities for juvenile offenders is through the state court system.

The Tribe would like to have the opportunity to work with the State of Washington whereby the Tribe could retain jurisdiction over juveniles both in civil and criminal areas and be able to utilize the State facilities for treatment, etc. This process would give Tribe's jurisdiction over their youth without having to duplicate the costly treatment facilities all ready in operation through the State system.

3. The U.S. Congress needs to restore the 1.0 million dollars cut for the FY-84 budget and continually appropriate a minimum of 15.0 million effective for FY-85 budget year for the implementation for the legal mandates contained in P.L. 600 and increase this budget as inflationary costs demand each year thereafter.
4. Provisions need to be incorprated that specifically provide for Indian child service population, preventative programs, merit on success of program, prioritize budget for Federally recognized Tribes, provide technical assistance to projects, and guarantee a three year funding cycle for demonstrated successful programs for P.L. 608.
5. Include provisions that mandate Federal, State, Private, and Tribal Agencies to immediately notify tribe where Indian child is enrolled in voluntary and involuntary Indian child placement cases. Upon this immediate notification, the child's tribe needs provisions to obtain legal access to the childs full name, birthday, tribal affiliation, social history, case plan, domestic relations, and insurance that the childs tribe will abide by the all confidentiality standards as required by the law to insure the childs best welfare, protection, and placement is implemented in each respective case.
6. Include provisions in Title II, Section 201(a)(3) to exercise the Indian rights of bi-racial children who choose to be Indian, regardless of whether child is enrolled in the tribe or not, when

one of the parents is legally recognized as an Indian and provide a legal mandate in this provision to all child placement agencies to insure the Indian child's Federal Trust inheritance and rights are guaranteed as an Indian consistent with 25 CFR regulations.

7. Provision to guarantee that the childs tribe is notified in cases of voluntary placement, with parents permission, by Federal, State, Private, and Tribal agencies to guarantee the Indian childs Federal Trust Rights to their cultural inheritance is exercised for the highest potential benefit for the child.
8. Include provisions that guarantee that the "qualified expert witness" utilized within Indian child placement cases obtains not only the professional expertise, but is also an expert in Indian customs, tradition, laws, and is legally authorized to represent the Indian child by the childs tribe or the intercepting Indian organization to insure the childs inherent Federal Trust Rights are fully exercised.
9. Include provision to guarantee that Federal, State, Private and Tribal child placement agencies notify the Indian childs tribe and jurisdiction be transferred to the tribe regardless of whether the parent(s) object.
10. Provision to resolve the conflict contained within the spelled out language of P.L. 608, the Indian Child Welfare Act and P.L. 272, Adoption Assistance and Child Welfare Act of 1980, involving custody of Indian children in group and foster care.
11. Provision that mandate each respective state to comply with the legal protectional trust rights of Indian children consistent with the Indian Child Welfare Act to guarantee Federal compliance is implemented.

Effective participation and consultation between Indian Child Welfare Workers, Tribe, States, BIA, and Human and Health Service needs to be considered to finalize a cooperative agreement that guarantees that all agencies will comply with the mandates contained within the 608 Public Law for the Indian Child.

12. Provisions need to be incorporated that guarantee that an appointed guardian for the Indian child insures expert knowledge in Indian customs, tradition, laws, and exercises the legal protection for the childs inherent federal trust rights as a tribal enrolled Indian consistent with 25 CFR.

SUMMARY

The Muckleshoot Tribal Youth Home has directly served 162 Indian Youth an 851 family members between 1979-1983 from the Northwest States of Washington, Oregon, Idaho, Alaska, and other States upon request to the Tribal Group Home. The Tribe has the only certified Indian group home in the State of Washington and has gained credibility from both Reservation Tribal Youth Service Agencies as well as State Child Placement Agencies as a valuable child resource, please make reference to the attached letters of reference.

An area of concern which the Tribe noted that has not been adequately addressed in the 608 act is the issue of Federal trust obligations including medical, education, and financial obligations for Indian children. Tribal Child Welfare Workers have found that many children have lost, and continue to lose benefits due to them as tribal members or Indians because uninformed workers for Private and State Agencies are uneducated as to tribal enrollment procedures and lack expertise in BIA or tribal regulations concerning birth and/or placement. By covering these trust responsibilities in the act, the Federal Government will be responsible for guaranteeing that treaty obligations are met.

Indian children and extended Indian families have been grossly violated by laws and child placement agencies that are not expert or professionally trained in Indian customs, traditions, and laws. This has caused the Indian child to experience confusion and often suffer irreparable damage in mental stability, property loss, social adjustments, self identity and self-worth. Effective Indian Child Placement Agencies serve as the professional and expert resources for our children. The U.S. Congress needs to guarantee the same Child Protective Services and rights to Indian children that are guaranteed to other children in this nation; but even more importantly, the government as our Tribal Fiduciary Trust Agency needs to protect these children's special legal trust obligations.

Thank you for taking the time to allow me to testify for the Indian Child Welfare Act, P.L. 608.

Sincerely,
Marie Starr
Marie Starr,
Muckleshoot Group Home Director
and Muckleshoot Tribal Council Member

MS/bs
ATTEST:

Sonny D. Bargala, Chairman
Muckleshoot Tribal Council

TRIBAL COUNCIL RESOLUTION NO. 84-19

WHEREAS, the Muckleshoot Tribe is directly participating as a resource for effective implementation of P.L. 608, the INDIAN CHILD WELFARE ACT and is the only Indian Youth Home licensed by the State of Washington; and

WHEREAS, the Tribe has been experiencing major deficiencies within the implementation of programs under this Congressional enacted law for the 608 welfare, protection, and custody of Indian children within our Northwest region; and

WHEREAS, because the Indian children are not receiving adequate protection as mandated within the intent of this Indian Child Welfare Act (P.L. 608), it is imperative that the United States Congress, Private Agencies, State Welfare Agencies, U.S. Health & Human Service Agencies, and the U.S. Department of Interior exercise mandates contained within this act to guarantee Indian child protection.

THEREFORE BE IT RESOLVED, that Muckleshoot Tribe hereby recommend that the following provisions be included by the United States Congress incorporating changes within the appropriate federal regulations and authorizing adequate funds to effectively implement mandates as contained within this law:

1. Definition of Indian shall be consistent with respective reservations definitions of Indians and shall include Canadian Indian children as qualified participants as per the legal language contained within the U.S. and Canadian government negotiated "Jay Treaty" for Indian people.

2. Inclusion of provisions that authorize State-Tribal Agreements for effective intervention for Tribal Court jurisdiction including Juvenile Justice issues of Indian children and State Child Welfare Agencies to serve as viable resources for the same, especailly in P.L. 280 States.

3. The U.S. Congress needs to restore the 1.0 million dollar cut for the FY-84 budget and consistently appropriate 15.0 million minimum effective for FY-85 budget year for the effective implementation of the mandates contained in P.L. 608 and increase this budget as inflationary costs demand each year thereafter.

4. Provisions need to be incorporated that specifically provide for Indian child service population,preventative programs, merit on success of program, prioritize budget for Federally recognized Tribes, provide technical assistance to projects, and guarantee a three year funding cycle for demonstrated successful programs for P.L. 608.

5. Include provisions that mandate Federal, State, Private, and Tribal Agencies to immediately notify tribe where Indian child is enrolled in voluntary and involuntary Indian child placement cases. Upon this immediate notification, the child's tribe needs provision to obtain legal access to the childs full name, birthday, tribal affiliation, social

(Continutation Resolution # 84-19

history, case plan, domestic relations, and insurance that the childs tribe will abide by the all confidentiality standards as required by the law to insure the childs best welfare, protection, and placement is implemented in each respective case.

6. Include provisions in Title II, Section 201(a)(3) to exercise the Indian rights of bi-racial children who choose to be Indian, regardless of whether child is enrolled in the tribe or not, when one of the parents is legally recognized as an Indian and provide a legal mandate in this provision to all child placement agencies to insure the Indian child's Federal trust inheritance and rights are guaranteed as an Indian consistent with 25 CFR regulations.

7. Provision to guarantee that the childs tribe is notified in cases of voluntary placement, with parents permission, by Federal, State, Private, and Tribal Agencies to guarantee the Indian childs Federal Trust Rights to their cultural inheritance is exercised for the highest potential benefit for the child.

8. Include provisions that guarantee that the "qualified expert witness" utilized within Indian child placement cases obtains not only the professional expertise, but is also an expert in Indian customs, tradition, laws, and is legally authorized to represent the Indian child by the childs tribe or the intercepting Indian organization to insure the childs inherent federal trust rights are fully exercised.

9. Include provision to guarantee that Federal, State, Private, and Tribal child placement agencies notify the Indian childs tribe and jurisdiction is transferred to the tribe regardless of whether the parent(s) object.

10. Provision to resolve the conflict contained within the spelled out language of P.L. 608, the Indian Child Welfare Act and P.L. 272, Adoption Assistance and Child Welfare Act of 1980, involving custody of Indian children in group and foster care.

11. Provision that mandate each respective state will comply with the legal intent for protectional trust rights of Indian children consistent with the Indian Child Welfare Act to guarantee Federal compliance is implemented. Effective participation and consultation between Indian Child Welfare Workers, Tribe, States, BIA, and Health and Human Services needs to be considered to finalize a cooperative agreement that guarantees that all agencies will comply with the mandates contained within the 608 Public Law for the Indian Children.

12. Provisions need to be incorporated that guarantee that an appointed guardian for the Indian child insures expert knowledge in Indian customs, tradition, laws, and exercises the legal protection for the childs inherent federal trust rights as a tribal enrolled Indian consistent with 25 CFR.

AND BE IT FURTHER RESOLVED, that this Resolution shall be routed to BIA, H.H.S., DSHS, NCAI, and such other U.S. Congressional committees who act on Indian Child Welfare matters, and

BE IT FINALLY RESOLVED, that the Tribe is requesting full support from the United States Congress to guarantee Federal Indian Child Protection Rights be practiced by all federal, State, private, and Tribal Child Protective Agencies and that Indian Child jurisdiction be immediately turned over to the respective tribes within this nation consistent with the 608 law.

CERTIFICATION

As Secretary of the Muckleshoot Indian Tribal Council, I hereby certify that the above resolution was duly adopted at a Regular meeting of the Tribal Council on the 16th day of April, 1984, held on Muckleshoot Indian Reservation, Auburn, WA, at which a quorum was present by a vote of 4 for, 0 against and 0 abstentions.

Marie Starr acting
Elaine J. Perez, Secretary

Sonny B. Bargala
Sonny B. Bargala, Chairman

JOHN SPELLMAN
Governor

Leo J. La Cla
Executive Director

STATE OF WASHINGTON
GOVERNOR'S OFFICE OF INDIAN AFFAIRS
1057 Capitol Way • Olympia, Washington 98504 • (206) 753-2411 • (SCAN) 753-6780

May 9, 1983

To whom it may concern:

I recommend and support the Muckleshoot Indian Tribe's grant application entitled Muckleshoot Child Abuse and Neglect Prevention Program.

It is reassurring and long overdue to finally have an Indian organization with such high quality and experience address this most critical need from not just a treatment approach, but from one of prevention.

The Muckleshoot Indian Tribe and the State DSHS and other State agencies have enjoyed a mutually productive relationship for a number of years. Perhaps one of our best and most productive efforts has been through the Muckleshoot Youth Home which is a proven, effective means by which the Tribe has addressed Indian child and family concerns, especially as they relate to child neglect and abuse, throughout the State of Washington and the entire Northwest. Should the Muckleshoot proposed project become a reality, the vast networking of State agencies and personnel would be readily available and accessible to fullfill our responsibilities and committments.

It is therefore without hesitation that I fully endorse and support the proposed Muckleshoot Child Abuse and Neglect Prevention Program.

Sincerely,

Leo J. La Clair

Leo J. La Clair

ELLMAN
[redacted]vernor

Karen Rahm
XXXXXXXXX
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
2809-26th Avenue South, NS6-1 • Seattle, Washington 98144

January 5, 1984

Marie Starr, Director
Muckleshoot Youth HOme
39015 172nd SE
Auburn, Washington 98002

Dear Ms. Starr:

As the only Indian specific youth home in Seattle/King County, the Muckleshoot Youth Home has provided valuable placement and social services to Indian children and their families.

Children requiring substitute care present a variety of problems and needs. When Indian children require out-of-home care, these needs are magnified and best met by culturally sensitive services. The Muckleshoot Youth Home provides such services and has proven to be a most valuable resource.

The Region 4 Indian Children's Unit has coordinated efforts with the Muckleshoot Youth Home in accessing clients to the Youth Home for placement and follow-up services. The Youth Home offers a vital alternative to non-Indian placements and thereby provides culturally relevant supportive services.

We wish you continued success in your efforts to provide a continuum of quality services to Native American/Alaska Native people.

Sincerely,

Alretta Bill

Alretta J. Bill, MSW
Supervisor
Indian Children's Unit
Region 4

AB:bnd

Mr. ALEXANDER. Our next witness is Joe Tallakson, representing the Lummi Indian Tribe.

STATEMENT OF JOE TALLAKSON, SENSE, INC., FOR THE LUMMI INDIAN TRIBE, BELLINGHAM, WA

Mr. TALLAKSON. Good afternoon. My name is Joe Tallakson. I represent the interests and concerns of the Lummi Indian Tribe regarding the Indian Child Welfare Act. I will be providing oral testimony today, with written testimony to be submitted for the record.

The Lummi Indian Tribe, located on the Pacific coast of Washington State, operates a child and family services program currently handling 135 wardships, 18 foster placements, oversight on 8 authorized foster homes with a total capacity of 28 children. The need and importance of the Indian Child Welfare Act for Indian children and their respective tribes across the Nation is self-evident. The procedures and processes to implement the act, however, have created difficulties that are both unavoidable and unnecessary.

In general, the Lummi Tribe strongly supports the recommendations presented by the tribes of Washington State regarding Indian child welfare. In particular, the tribe recommends the development of an entitlement base for each tribe, with a separate set-aside for competitive grants; 3-year-cycle funding under the competitive grants to provide program continuity; establishment of evaluation guidelines consistent from tribe to tribe and agency to agency; that the conduct of evaluations is clear and instructive for program staff to advise and assist local resource staff in the development of their programs; and, to develop training programs for all resource staff dealing with Indian child welfare on a continuing basis, versus the current interim and intermittent basis of training. In that regard, the State and tribal judges receive training in Indian Child Welfare Act law and the current issues.

The Lummi Tribe also would be interested in a concentrated technical assistance to tribes and adjacent counties to resolve jurisdictional conflicts. For instance, in Whatcom County, the court and prosecutor's office have failed to respond to tribal requests for assistance unless the case was processed through the county court, or the county court system has exhibited difficulty honoring a tribal court order when a child has been declared a dependent ward of the court and lives off reservation, or geographic location often rather than the type of offense now determines jurisdictional authority in cases of rape, incest, or physical abuse.

In closing, strengthening the staff resources through increased appropriations, core funding for each of the tribes in their Indian child welfare program, targeted training and technical assistance, and a separate and distinct appropriation of Indian child welfare funds within the BIA social services is necessary to ensure the development of adequate and effective local tribal resource staff and the ultimate goal of providing protective and supportive services for Indian children caught in difficult life situations in their most delicate stage of development. Thank you.

Mr. ALEXANDER. Thank you, and we will look forward to your written prepared testimony.

[The prepared statement follows:]

PREPARED TESTIMONY OF THE LUMMI INDIAN TRIBE, SUBMITTED BY JOE TALLAKSON

The Lummi Indian Tribe is geographically located in Whatcom County in Northwest Washington State, about five (5) miles west of the City of Bellingham, ninety five (95) miles north of Seattle and fifty (50) miles south of Vancouver, British Columbia.

The original acreage of the Lummi Reservation included 12,500 acres, about forty (40) percent of this has been alienated and is now owned by non-Indians. Approximately 7,900 acres remain in Indian control.

The Lummi Indian Tribe feels that our most valuable resource is our own people and our future lies with our Children. The children provide our links between generations, and are the future carriers of our traditions and culture. They will ensure that the Tribal family unit will continue to exist.

The Lummi Tribes current population (2,503) is young, with over 50% of the population under the age of 21. Of these there are 1,182 children under sixteen (16) years of age. During the fiscal year 1983 one hundred and sixty-six (166) juvenile cases were heard in tribal court. One hundred and thirty of these cases were dependency hearings. The Tribal Prosecutor's office processed 55 child protection service cases resulting in the need for protective supervision. Fifty-three (53) cases were placed in foster homes and sixteen (16) were returned to their natural parents. The incidence of child abuse is unknown overall, but is clearly increasing as is evidenced through documentation.

The Lummi Tribe presently operates a Child and Family service program and staffing consists of a coordinator, secretary, caseworker and a part-time case monitor.

Currently an important aspect of this program is the ability to license homes which provide foster care to Indian children. The program has 18 children in foster care. The Lummi Tribe currently has eight (8) approved foster homes, with approximately four homes pending approval. Potentially 28 children could be placed in these eight (8) homes. If all of these children were placed, the homes would be overloaded. It is essential that more homes be approved and made available for future placements.

Lummi Child and Family Services also has under its supervision 135 wardship cases. Lummi Child and Family Service is attempting to monitor these cases to insure that the wardships are abiding by the tribal court recommendations.

A new component recently added to the Lummi Child and Family Services program is a case monitor position to follow up on all sex abuse and severe physical abuse cases. Currently, this case worker has approximately 25 cases to monitor.

An additional component of Lummi Child and Family Services is to oversee and coordinate the Lummi Child Safety Council. This group is made up of various support service agencies both on and off the reservation. Their function is to discuss ways to educate the community in child abuse issues. The tribal program also oversees the Child Advocate Council. The Child Advocate Council staffs all severe abuse cases and refers clients to appropriate resources. The case monitor then insures that appropriate counseling takes place. For the victim, the abuser and the family.

As can be evidenced by the previous statistics, abuse and neglect is present within the Lummi community. To break the cycles and presence of child abuse the Indian Child Welfare Act is essential to the Lummi Indian Tribe, as well as to all Indian tribes.

P.L. 95-708, in and of itself is viewed as a positive step towards reinforcing tribal jurisdiction over child welfare issues. However, since the enactment of P.L. 95-708, there has been a lack of adequate congressional appropriations. Without adequate funding levels it is difficult to implement and to carry out the main purpose of the act.

There are many agencies in the surrounding community that may have resources to aid the tribe in addressing many of the issues confronting the Indian family unit. The tribal program is under staffed and underfunded which results in an inability to adequatiy coordinate with these various agencies and services, although the framework exists.

The Lummi Child and Family Services staff are unable to attend important meetings, provide input into planning of new service, organize the coordination of resources, (such as meetings with law enforcement agencies to resolve jurisdictional issues) and to compile necessary data for funding agencies.

Adequate resources are needed to effectively implement the Indian Child Welfare Act. The Lummi Tribe would prefer that a large percentage of funds be allotted to each tribe and have a smaller percentage be available on a competitive basis, and that grants be awarded on a three year basis and annual evaluation, budget submission and program update. This would alleviate the sporadic funding cycle and thus, insure program productivity. When programs are unsure, from year to year, if they will receive funding it's impossible to plan on a long term basis. Without long range planning, adequate prevention and educational needs cannot be met. The only aspect that can be dealt with are the case by case crises that arise.

Evaluation guidelines need to become an integral part of the Child and Family Service programs. This type of component allows the programs to keep on direct track and direct all energies in a positive manner. Rather than work from a negative aspect and deal only with the crisis situations. Evaluations are an important component to the success of a Child and Family Services program.

Training monies should be set aside in the funding allotments to insure education for tribal court personnel and Child and Family Services personnel. This is essential for all staff to be educated in abuse issues. This funding should also allow for contractural services which would afford the respective tribes resources for evaluation, legal intervention, periodic training for the staff and community as well.

In closing, strengthening the staff resources through increased appropriations with some emphases on trining and technical assistance, and a separate and distinct appropriation for the Indian Child Welfare Act within the B.I.A. social services is necessary to insure the development of adequate and effective local tribal service delivery in this area is so critical to the future of Indian communities.

The Lummi Tribes Child and Family Services Programs ultimate goal is to provide protective and supportive services for Indian families, and most importantly for the children caught in different and difficult situations in their most delicate stage of development.

Our next witness is Maureen Pie', from Kotzebue, AK.

STATEMENT OF MAUREEN PIE', ATTORNEY-AT-LAW, MANIILAQ ASSOCIATION, KOTZEBUE, AK

Ms. PIE'. Thank you. I would like to thank the committee for the opportunity to present some limited oral testimony today. I would also appreciate the opportunity to submit more formal comments within the next 30 days.

Mr. ALEXANDER. Fine.

Ms. PIE'. My name is Maureen Pie'. I am an attorney with the nonprofit tribal organization in the Northwest Arctic region of Alaska. The name of the organization is Maniilaq Association, and we are an association formed to serve the social, health, and educational needs of 11 Alaska Native villages in northwest Alaska.

If you would allow me, I would like to set the stage a little bit for you and describe the part of the country where I live and work. Kotzebue, AK is unlike anything that I have ever seen or experienced in the lower 49 States. Kotzebue is a small village of approximately 3,000 people, which makes it by village standards a very large community. It serves as the transportation and economic hub of a region of the State which was carved out by the Alaska Native Claims Settlement Act, and which is approximately the size of the State of Indiana. Within that area reside approximately 6,000 people, 95 percent of whom are Inupiat Eskimo. The other 3,000 who do not live in Kotzebue live scattered in 10 small villages, with populations anywhere from 600 to 62 people. Each of these villages is considered an Indian tribe by definition of the Indian Child Welfare Act, as well as many other pieces of Federal legislation.

We have tribal governments in every one of these villages, eight of which are Indian Reorganization Act councils and three of which are traditional councils in the process of applying for IRA status. Our tribal councils for many years have been dormant, in fact almost nonexistent. Several years ago, the State of Alaska actively encouraged villages to incorporate as municipalities under State law, and since then small seven-member city councils have had the most influence in running day-to-day affairs in the villages of northwest Alaska. Currently, 10 of our 11 villages are such municipal corporations.

In recent months, our IRA and traditional councils have begun to see that a return to tribal and traditional custom will be the best hope for solving the severe social problems that beset the Alaska Natives of the region. Among them are epidemic domestic violence, suicide rates often estimated at 90 times the national average, and shockingly high rates of alcoholism, just to name three of the most visible problems. Another problem is the breakup of Indian families, and we applaud the Senate's efforts by the 1978 Indian Child Welfare Act to help resolve some of the problems that beset Indian families.

Currently, Maniilaq Association has started a brandnew program to provide legal counsel to the tribal governments in intervention in Indian Child Welfare Act proceedings. The program that went into operation approximately January 15 of this year, and it is currently staffed by one attorney for 10 months of the year and one paralegal for 6 months of the year.

The rest of my testimony will highlight three of our most critical needs. The first two are funding, of course, and communication. We are extremely isolated. In fact, I only heard about these hearings through a chance discussion with Bert Hirsch of the Association on American Indian Affairs. To my knowledge, I am the only representative of any Alaska Native group present, and in fact the United Tribes of Alaska, the Alaskan Federation of Natives, and other Indian lawyers who work for organizations similar to mine had not heard of these hearings until I called to find out if they would be attending. That was about 2 weeks ago.

As an example of what we feel adequate funding would be for a good tribal government program to provide not only technical assistance but training for our tribal councils—folks who do not remember or even have the first idea of what a tribal constitution is for—we submitted a budget to the Administration for Native Americans for approximately $250,000 which would fund three full-time staff people. We realized that funding was very limited and that our chances were not good of receiving the entire amount. However, this was our best estimate for an adequate program. We did receive $57,000 for this current fiscal year. We combine that with about $20,000 from the Bureau of Indian Affairs' tribal operations and rights-protection programs to provide our tribal government services.

Our villages are in an even worse situation when it comes to finances. I would like to tell you a story of the village of Kobuk, which is on the upper reaches of the Kobuk River, the furtherest village in the region. It is situated at the base of the Brooks Range. It has a population of 62 and is entitled to approximately $5,700 from BIA 638 grants to run its tribal government office. The village, as all the other villages, has very limited sources of independent income and relies almost exclusively on the bureau and other Federal programs for funding.

The village, for lack of adequate accounting and bookkeeping resources, had let a former grant slide and was without current funding and, therefore, without staff. When I visited the village a month ago, my assistant and I, with a volunteer from the village, opened 6 months worth of mail addressed to the tribal government. Included in this mail was a notice of Child-in-Need-of-Aid proceeding, sent by the State court system pursuant to the Indian Child Welfare Act, which informed the council of its right to intervene in a matter concerning a child from its village. The hearing had already taken place by the time the notice was opened.

A second example I would like to present involves a rather complex court case that we have going right now in the Superior Court of the State of Alaska, in Kotzebue. It is a trial-level court which handles adoption proceedings. We have an Alaska-Native mother who voluntarily gave up her child for adoption to a non-Native. When the petition for adoption was filed, the Kotzebue IRA council sought to intervene, and as a result of arguments by the preadoptive mother's attorney, that decision was held up for several months. The child is now 16 months old. For 7 months of her young life, this adoption proceeding has been contested, and because information is slow in getting out to the State court, this is a case of first impression for the judge in Kotzebue. He was very unfamiliar with the Indian Child Welfare Act, very unfamiliar with basic principles of Indian law.

We are still in litigation, briefing legal issues. The court is now entertaining a constitutional challenge to section 103(c), which allows for the absolute right of withdrawal of consent, which the mother has since sought to do. The litigation continues as the child continues to grow at a very early and important stage of her life and continues to remain with the preadoptive nonnative mother. This brings me to the third area that I would hope the committee would address, and that is the need for certain amendments to the act.

I will not go into detail here, but just briefly I would like to point out some of the sections of the act which in our litigation in Kotzebue, have given us difficulties. I refer to title 25 of the United States Code, so I will use those section numbers. First, section 1903, definitions. The court refused to apply a definition of "termination of parental rights" to adoption proceedings, even though by State law definition an adoption does work a termination of the parental rights of the natural parent. For that reason, our IRA council was denied a right as a matter of law to intervene. However, the tribe was given a discretionary right of intervention under Alaska court rules.

That involves 1903(1), subsections 2 and 4.

Also, the definition of "Indian" in 1903(3) will become a problem, as our Non-Alaska Native Claims Settlement Act shareholders have children.

Under section 1912, involving notice and the right of intervention in involuntary proceedings, again our court found that a contested adoption was not an involuntary proceeding, and based his denial of the right to intervene in part on that finding.

Section 1913(c) or section 103(c) of the act is the focus of our litigation, and we are expecting a trial court decision within the next month on whether or not the act is unconstitutional in that section because it will not allow a hearing on the best interest of the child.

Although we have argued to the court that it sets up a presumption based on extensive testimony to Congress on what is in the best interest of an Indian child in this case, there is currently a novel constitutional argument pending based on due process and a purported liberty interest in preadoptive family integrity.

If the court does so modify that section of the act, we will be forced to litigate who has the burden of proof in determining best interest of the child. Of course, this was not contemplated by the act, because it creates an absolute right to withdraw consent. Section 1912(f), which requires proof beyond a reasonable doubt for termination of parental rights does not automatically apply to a situation like this. So we may be running into problems in that area as well.

In sum, the act, as I said before, is apparently a wonderful step toward helping Indian families. Alaskan Native families, however, particularly in the bush, are extremely isolated. Their tribal councils are struggling for their very existence, let alone trying to intervene in Indian child welfare proceedings in State courts far from the village. And we are nowhere near the point of reestablishing tribal courts.

We appreciate the committee's attention to our concerns for better communication from all areas of the Government, for more adequate appropriations for these programs, and for addressing our concerns for needed amendments to the Indian Child Welfare Act. Thank you very much.

Mr. **Alexander**. Thank you very much. We would be interested in your written testimony, if you have any concrete ideas about how to deal with the notice problems that exist in Alaska. We have had this act in existence for 6 years, and apparently it is not even known by the local courts, as you indicate, and the general range of information problems that you have mentioned in your oral presentation. We will be anxious to receive it.

Ms. **Pie**. I would be happy to put together something on that issue.[1] I would just like to say, in defense of the judge in Kotzebue, he was not completely unfamiliar with the existence of the Indian Child Welfare Act. However, because of the limited tribal resources, rights have never been forcefully asserted, and therefore he has never really had to deal with these issues.

Mr. **Alexander**. Thank you for coming, and we appreciate your testimony.

Our next witness is Eric Eberhard, from the Navajo Indian Nation.

STATEMENT OF ERIC EBERHARD, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, NAVAJO INDIAN NATION, WINDOW ROCK, AZ

Mr. **Eberhard**. Our prepared testimony was sent over this morning. The name that appears in the first line of that is Craig Dorsay. For the committee's information, Mr. Dorsay was unable to make it to the hearing today, oddly enough, due to a hearing in California in a Child Welfare Act case. My name, for the record, is Eric

---

[1] Not received at time of printing.

Eberhard. I am the deputy attorney general of the Navajo Tribe's Department of Justice. I am appearing here today on behalf of Chairman Peterson Zah and the Navajo Tribal Council.

If I may, I would like to start by discussing briefly the funding needs under the ICWA. As the committee may be aware already, in the last 2 fiscal years, the Bureau of Indian Affairs has provided approximately $6,000 per area office for training of tribal staff to handle matters related to ICWA. I think it would be an understatement to call that amount of money ridiculous, but out of courtesy to the Bureau that is what we will call it: ridiculous. It is wholly inadequate.

We have, in the Navajo area, approximately 80,000 people under the age of 18. We cannot begin to adequately meet the tribe's duties to those children with $6,000 to train tribal personnel. Our total funding for Child Welfare Act matters in the Navajo area for the last 2 fiscal years has been approximately $300,000. Again, as I am sure you are well aware, that is the maximum allowed under current Bureau regulations.

We suggest to the committee that the formula for distribution of ICWA funds needs careful examination. It creates serious inequities. With the largest population to be served, we are in a position of competing for minimal funds, and to the extent that we succeed in that competition, whose interest is served? Certainly not the interest of all Indian people. The Bureau, through its allocation formula, has created an underfunding situation, and proposes for fiscal year 1985 to make that problem worse by terminating all funds for off-reservation ICWA programs.

Approximately half of the Indian people in the United States live off reservation. I am sure that when you review the legislative history of the ICWA, you see clearly that one of the primary concerns of Congress was to deal with the situation confronting Indian families in urban off-reservation areas. Here we are approximately 6 years later, and the Bureau of Indian Affairs does not even have the wherewithal to request funds for urban Indians under the ICWA, much less to provide adequate funding.

Each year in the Navajo area, we project handling approximately 250 ICWA cases, and each year those figures are exceeded by at least 50 percent. Two years ago, that figure was exceeded by 100 percent. We simply do not have the money to be able to handle those problems. In this fiscal year alone, we have already contributed from tribal general revenues $30,000 to retain out-of-state legal counsel and to pay travel and expert-witness fees. We already contribute two attorneys who work virtually full-time at tribal expense on ICWA matters. We think the Bureau, in this program as in many other programs, is simply walking away from its trust responsibility, and it is doing so in the worst possible manner, by claiming that the Congress will not appropriate adequate funds.

From our point of view, the problem is not here with the Congress. The problem is in the Bureau. I would point out again that if you look at their fiscal year 1985 budget request, you can see the proof of that.

As to the substance of the act itself, I would first like to point out that at least for Navajo people, the act seems to be working fairly well. There are some problems, and I think those problems start right in the declaration of congressional policy. If you look carefully at sections 1901 and 1902 of the act as codified, you find the use of the word "removal of Indian children." We are finding that the State courts have construed that term far too narrowly. The Baby Boy L case I am sure has been brought to your attention, and it is perhaps the paramount example of how a State court has taken the plain language of the statute and turned it on its head.

If an Indian child has never lived with an Indian family, but the Baby Boy L says there is no removal problem, and the ICWA does not apply, we think that Congress can correct that problem, and we think the way to do it is a very simple amendment to section 1901 and 1902. The specifics of the language we are proposing is in our written testimony.

Moving on to section 1903, there is confusion among the State courts as to whether the ICWA applies when the placement before it is a voluntary or consentual placement. Again, we think the State courts are taking the plain language of the statute and turning it on its head. It is clear to us, from the overall statutory framework, that the act does apply to voluntary placement. State courts would have us believe to the contrary. They would narrowly construe the act to only apply in situations of involuntary placement.

A principal concern for the Navajo people under the ICWA is section 1911(a). The State courts have uniformly taken the position in cases involving Navajo tribal members that the terms "domiciled" and "residence" are defined by State law, not tribal law. Because the Navajo people have their own unique definitions for "domicile" and "residence," what we are encountering at the State end is a total unwillingness to accord full faith and credit to those Navajo definitions of "domicile" and "residence." We even have a situation where a child kidnapped off reservation, taken to the jurisdiction of a State court in Utah, was found as a matter of State law to have changed his domicile and, therefore, was found to be subjected to State court jurisdiction.

Again, we have suggested in our written testimony some corrective action there. But I would like to state here and now for the record that Congress must impose a Federal definition of "domicile" and "residence" to bring an end to the destruction that the State courts are wreaking in this area. They have essentially pulled the act inside out when it comes to determinations of domicile and residence and tribal court jurisdiction.

Under section 1911, subpart D, the full-faith-and-credit provision, what we are encountering is a rather technical interpretation of this provision by the State courts. For example, if one of our tribal court judges or one of our tribal court clerks fails to affix the court's seal in the spot marked on the form, the State court refused to accept that judgment as binding and valid under full faith and credit. The State courts are applying non-Indian standards of due process, equal protection, to tribal court proceedings involving Indian children. On that basis, they are refusing to accord full faith and credit to tribal court judgments.

We think that can be corrected fairly simply. We think that the State courts ought to be required to apply a standard of fundamental fairness—nothing more and nothing less—in issues involving full faith and credit. The act, as drafted, allows the States to apply hypertechnical, non-Indian standards in making these inquiries, and I would suggest to you that any State court judge has the wherewithal to take a judgment from any other jurisdiction—be it Federal, tribal, or another State—and make a determination under existing State laws that they do not require full faith and credit for those judgments. The act, as drafted in this provision, has encouraged that tendency among State court judges.

Under section 1912(a), we are encountering some difficulty with the State agencies and the State courts in the situation where a parent is in fact making a bona fide voluntary placement of an Indian child. We are not receiving notice of those proceedings. We think that a simple amendment here would cure that problem. The amendment, of course, would be to expressly state that notice is required, and the tribe is the proper recipient of that notice.

What is occurring in all too many instances is that Indian parents are being cajoled, persuaded, or intimidated into voluntary placements. The tribe is not being notified of those placements. The placement preferences that are set forth in the act are then ignored by the State courts and the State agencies, and we find that the act in essence is subverted at that point, to the detriment both of the Navajo Tribe, the Navajo child, and the parents of that child.

Under section 1912, subparts (e) and (f), we also have an ongoing difficulty with the term "expert witnesses." We are in litigation right now in 19 States, trying to return Navajo children to the Navajo Tribe and their extended families or their natural parents. In over half of those cases, our tribal social workers are not permitted to testify as experts, despite the fact that on any objective evaluation, you would find that their qualifications, training, and experience are at least comparable to, if not superior to, their counterparts in the State system. In those same cases, the State courts are allowing State social workers to testify as expert witnesses. We would ask that the Congress address this problem by either providing a specific definition of what kinds of qualifications an expert needs, or by expressly declaring that tribal social workers shall be expert witnesses for purposes of the act.

Under section 1915, we are finding that the State court judges are having a field day with the language "good cause to the contrary." What is good cause to the contrary? In our situation, if a Navajo family lives 50 miles from the nearest hospital, we have had State court judges declare that to be good cause to the contrary. If the State social worker tells the judge that the nearest school is 40 miles away, we have had judges declare that to be good cause to the contrary.

I emphasize that these findings by State court judges are not in cases where the child has exceptional medical needs or exceptional educational needs. These are ordinary children in all respects, except they are being denied the right to live with an Indian family and to be raised in their own culture. We would ask that the Congress either strike from this act the language "good cause to the contrary" or more carefully circumscribe it so that the State courts are not able to continue to use it to defeat the intent of the act by failing to apply any of the placement preferences.

This problem is probably the most serious one that we face. Out of 200 cases that we have handled in the last 15 months, this has been an issue in over half.

Finally, I would just reemphasize that from our point of view, this is a good law. It has helped tremendously. We think it does need some changes, if the intent of Congress is going to be met. We also would reemphasize the need for funds. The law is going to be meaningless for most tribes without adequate funding. Happily, the Navajo Tribe is able to put some money into it. But what about all the other and smaller tribes that are unable to do that? And even in our situation, there are limits to how much money we can afford to spend for what the Congress has declared to be a Federal trust responsibility.

I would be happy to answer any questions you may have, and I would like to express my thanks for the opportunity to appear before you.

Mr. **Alexander**. I have only one general question. I am not really sure that you can respond to it at this time, but I would be interested in your views. What you basically have laid out in your testimony is an issue-by-issue correction, if you will, of various State courts' attempts not to implement the act. Now, if one was a creative State court, I assume that they could draft other exemptions onto whatever corrections we passed. What I am really asking is: Is there another approach that we might look toward rather than coming back every year or two and overturning 10 or 12 specific court decisions? The State courts, if they are going to be hostile to the act—assuming that to be the case for discussion—then they are going to not necessarily understand the amendments that are created to cure the problem we thought we had cured 6 years ago. I would just like for you to be thinking on that, if you would.

Mr. **Eberhard**. From our point of view, it would be far preferable if all of these cases were heard in Federal court. We believe we would receive a much more fair hearing. We believe that the Federal courts have historically shown a greater sensitivity to both Federal Indian law and the needs of Indian people in general. That will not solve all the problems. There certainly are going to be some Federal judges who are hostile to the intent of this act. We think that some of the problems really are simply drafting: That some State judges of good faith have read the act improperly, and that with some clarification, that might take care of a percentage of the problems we are encountering.

How many State judges are really in a position of open hostility to the act is very hard to determine. I think there would be objections from a lot of people, judges and otherwise, were these cases all to be heard solely in Federal court. So from my point of view, and I think from the point of view of most of the lawyers who represent the Navajo Tribe on this, it is worth giving the State courts one more try to do it right, with some amended language from the Congress. And if in 2 or 3 years, that has not worked, then I think the Congress could clearly justify removing these cases from State court jurisdiction and putting them exclusively in the Federal district courts.

Mr. **Alexander**. Thank you. We appreciate your testimony.

[The prepared statement follows. Testimony resumes on p. 172.]

PREPARED
TESTIMONY OF THE NAVAJO NATION BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON THE OVERSIGHT HEARINGS OF THE INDIAN CHILD WELFARE ACT

I. INTRODUCTION

My name is Craig J. Dorsay. I am an attorney employed by the Navajo Nation Department of Justice. One of my primary responsibilities involves handling cases under the Indian Child Welfare Act. Chairman Zah has requested that I testify before the committee with regard to the ICWA. I am accordingly proposing several amendments to the ICWA on behalf of the Navajo Nation. In addition, I would like to offer some comments on funding needs under the ICWA. These amendments are based on my experience with over 200 Indian Child Welfare Act cases, as a trainer in over 50 training sessions on the Indian Child Welfare Act, as author of a litigation manual on the Indian Child Welfare Act published for the Legal Services Corporation Research Institute, and as Director of the National Task Force on the Indian Child Welfare Act. Most of these amendments are proposed in response to state court decisions which have attempted to limit the application of the Indian Child Welfare Act by distorting either the language or the legislative history to eliminate certain categories of proceedings from the Act's coverage. I will list these amendments in order as we proceed through the statute. A short explanation of the reasons for the amendments will follow each proposed change.

II. PROPOSED AMENDMENTS

The first change involves the findings and policy sections, 25 U.S.C. §§ 1901, 1902. Section 1901, subsection 4 and section 1902 talk about the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in homes which will reflect the unique values of Indian culture. Several courts, including the Kansas Supreme Court in Baby Boy L, have applied this removal language to state that the Indian Child Welfare Act does not apply in a situation where the child has never been a member of an Indian home. Several other courts have rejected this language, namely the California Court of Appeals in the case of Junious M. and the Arizona Court of Appeals in The Appeal of Maricopa County, but confusion still exist surrounding this language. Applying the word "removal" to the Indian Child Welfare Act excludes all independent adoptions where the child is placed in an adoptive home without ever having been given a chance to be placed with the Indian natural parent or the Indian extended family, and violates Congress' responsibility to protect the potential tribal population of eligible tribal members. While independent adoptions and step-parent adoptions in the context of divorce proceedings were clearly meant to be included within the Act's protections, state courts seeking to ratify an already existing adoptive placement or who are disenchanted with the Indian Child Welfare Act to begin with have in several cases applied this language to exclude such children from the protections of the Act. Therefore, we suggest that the declaration of policy be amended to state: "the establishment of minimum federal standards for the removal of Indian children from their families, the placement of all Indian children who must be placed in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." The Baby Boy L problem will also be addressed in other sections of the Act.

The next section of the Act is the definition of child custody proceedings, 25 U.S.C. § 1903. Again, we are dealing here with the fact that several courts have interpreted the findings of the Indian Child Welfare Act to hold that the Act was only meant to apply to agency removal of Indian children in involuntary child and abuse situations, even though this kind of holding ignores the entire voluntary consent section of the Act. Therefore, in the definition of child custody proceeding, we would add at Section 1903(1) "Child custody proceedings shall mean voluntary and involuntary actions and shall include - ." Then the various types of proceedings should be listed except that under Section 1903(1)(i), foster care placement, it should read "foster care placement which shall include any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution. .. and shall include voluntary placement by the parent of an Indian child;" Section 1903(1)(ii) termination of parental rights, should read "which shall mean any action resulting in the termination of the parent-child relationship, including termination which occurs as part of a voluntary adoption;" Section 1903(1)(iv), adoptive placement, shall read "which shall mean the permanent placement of an Indian child for adoption by an agency or by private individuals, including any action resulting in a final decree of adoption."

Under 1903, subsection 3, the definition of Indian needs to be revised to include all Alaskan natives. The problem with this definition arises because Alaskan natives are only included under the ICWA if they are members of Regional Corporations. Since new children do not become members of Regional Corporations until and unless their parents die, this section should be amended so as to include all Alaska natives.

Under 1903, subsection 6, the definition of Indian custodian must be changed to state "means any Indian person who has lawful custody of an Indian child under tribal law or custom or under state law." This change from the word "legal" to "lawful" is necessary due to the Oregon Supreme Court decision of State ex rel. Multnomah County Juvenile Department v. England, where the Oregon Supreme Court interpreted the word "legal" in a technical sense to hold that since state law gives legal custody of a child and foster placement to the state social services agency, no Indian person can be an Indian custodian. Since all 50 states have definitions which place legal custody in the state agency, the word "legal" should be changed so that the purpose of the Act is fulfilled, namely that the person who has physical custody under state law and stands in the shoes of the parent is protected from the inappropriate cultural removal of the Indian child from their custody. In one case a state court decided that because tribal custom did not specifically define custody in a relative as "legal custody," the grandparent in that case could not have legal custody under tribal custom and was not an Indian custodian. This opportunity for technical obstruction of the Indian Child Welfare Act must be removed.

Under 1903, subsection 7, the definition of Indian organization must be expanded to include organizations composed of terminated

Indians. At present, 25 U.S.C. § 1932 includes terminated Indians as organizations which are eligible to receive ICWA grant funds and to establish programs, including those for the placement of Indian children who must be removed from their families. However, since the definition of Indian organization in Part I of the Indian Child Welfare Act excludes terminated Indians, under the placement section of the Act, 25 U.S.C. § 1915, an Indian child could not be placed with an Indian organization which was controlled or operated by terminated groups of Indians. This is an obvious lapse in the drafting of the Act.

Section 1903, subsection 9, addresses the definition of parent, and must be expanded to specifically recognize the rights of biological parents under the United States Constitution. Even though 25 U.S.C. § 1921 states that federal law which provides higher protections to the rights of parents shall apply in the Indian Child Welfare Act, several courts have apparently been mystified by the absence of the word parent in the right to intervene under 25 U.S.C. § 1911, and have held that since a parent is not the first listed preference under the placement section for the Act, 25 U.S.C. § 1915, that parents were obviously not meant to be included within the Act's protection. This distinction is critical in those cases where a non-Indian mother is trying to place her child with non-Indian adoptive parents and states that she does not want her child raised as an Indian, even though she does not wish to raise the child herself. While it seems clear to those of us who practice Indian law that section 1921 protects the rights of unwed Indian parents in the proceeding, a short statement in the definition of parent that says "parents shall have all those rights to which they are entitled under the United States Constitution" will help clarify this confused area for state courts, and will give them less opportunity to avoid the application of the Act's requirements.

Section 1911 needs to be amended, or an additional definition section needs to be added which addresses the definition of residence and domicile. While the Bureau of Indian Affairs stated in its Guidelines that no special definition of residence and domicle needed to be adopted because those terms were adequately defined by state law and did not frustrate the intent of the Act, the experience of this attorney in over five cases has been that the state court will distort their own state definition of domicile to rule that jurisdiction over the case has been lost by the Indian tribe and that the state court can properly exercise jurisdiction over a proceeding. When this decision is made by a state court, invariably custody is awarded to non-Indian adoptive parents or foster parents over the requests and desires of the Indian tribe and Indian family. In a noteworthy case in which I am presently involved, an Indian child who spent his entire life on the reservation and who was kidnapped from the reservation by an Indian relative was ruled to have had his domicile shifted to Utah by the act of the natural mother abandoning the child. This kind of decision shows no respect for the sovereignty of Indian tribes and results in expensive legal battles to obtain the return of such children to the reservation, during which time they encounter massive emotional scarring because of their attachment to their non-Indian family.

Section 1911(b) needs to be expanded to address the problems of Public Law 280 tribes. For these tribes the child may be residing or domiciled on the reservation, but the state court may still have exercised initial jurisdiction over the child because of the dictates of Public Law 280. Several of these courts have ruled that they cannot transfer the case to tribal court where there is concurrent jurisdiction because the transfer provision of the ICWA only involves children who live off the reservation. Even in those situations where there is concurrent jurisdiction and the child lives on-reservation, it is the obvious policy of the Act to transfer the proceedings to tribal court to have the proceeding heard in an environment favorable to the Indian child.

Section 1911(c) should be amended to make it very clear that the tribe and Indian custodian have the right to intervene in both voluntary and involuntary proceedings. I would also recommend that this intervention section be expanded to include placement proceedings and adoption proceedings. This is because without the right of intervention, a state court will often not know that a tribe has modified its order of placement preference pursuant to section 1915(c), that an extended family member wishes custody of his or her child pursuant to sections 1915(a) or (b), or that a natural parent may desire the return of their child under section 1916.

Under section 1911(d), I would recommend that an express statement be included in the full faith and credit provisions stating that it is the requirements of fundamental fairness that shall guide whether the state court shall give full faith and credit to a tribal court order. In numerous cases I have been involved with, state courts have refused to give full faith and credit to tribal court orders based on technical distinctions such as the fact that notice was given to the attorney rather than served directly on the non-Indian adoptive parent even where the adoptive parents have received actual notice, where the seal is not affixed to the proper section of the paper and other hypertechnical distinctions which serve only to defeat the implementation of the Indian Child Welfare Act.

Section 1912(a) involves the basic contradiction that no notice is required in voluntary proceedings, or that this result seems to be intended by the section. Many states now take the position in voluntary proceedings that if a mother signs a waiver statement stating that they do not wish the Indian Child Welfare Act to apply, notice of any proceedings can be avoided to the Indian tribe. This violates the tribe's right to have a child placed according to a modified order of preference, and violates the right of the extended family to the placement preference order because they are often prevented from coming forward to express their desire for custody of their children. Therefore, I would recommend that subsection (a) be amended to just state simply "in any proceeding in a state court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of or termination of parental rights to an Indian child shall notify the parent or Indian custodian, ..." Notice does not mean intervention and obstruction by the tribe in all instances and if the placement preferences of the Act are followed, there will be no reason to fear tribal intervention in voluntary proceedings.

Section 1912(c) needs to be expanded so that the party to an Indian Child Welfare Act proceeding has the right to examine all reports or other documents used by the court or which may be the basis for any decision by the court. Several state social workers have refused to release information to tribes on the ground that that information has not been "filed" with the state court. This distinction is especially critical where a state worker will file a social summary with the court, but it is that worker's raw data file which will provide information to the Indian tribe or Indian parent about the basis for the social worker's dispositional and case work decisions.

Under sections 1912(e) and (f), I would recommend that a definition of expert witness be included directly in the Act. Several courts have refused to recognize as experts tribal social workers with extensive experience and on the other hand have recognized state social workers with no experience with Indian children or Indian social work. This kind of decision is contrary to the direct legislative history of the Act, which states that expert witness is meant to apply to someone with more than normal social work experience.

Section 1913 needs to be amended to state specifically that it applies to independent adoptions where the child is placed directly by a non-Indian parent into a non-Indian home and the Indian family is denied custody. This is the Baby Boy L problem I mentioned before.

Section 1914 must be amended to clarify federal jurisdiction under the Indian Child Welfare Act. It appears from the language of section 1914 that it is the initial state court action violating the Indian Child Welfare Act provisions that gives rise to jurisdiction in any court of competent jurisdiction, including federal court. This rationale, however, runs contrary to the accepted judicial maxim that once in state court, appeal can only be made through the various state courts. Since Indian tribes have a right to original federal jurisdiction under 28 U.S.C. § 1362, this right to have issues of federal law decided in federal courts should be protected under the Indian Child Welfare Act. However, since it is the obvious intent of the Indian Child Welfare Act that such proceedings take place first in a state forum, the tribe's right under 1362 to get into federal court must be protected. If a tribe were to refuse to go into state court at all and were to file an initial proceeding in federal court, it is likely that the federal court would abstain based on the reasoning that it could not assume that a state court would consciously violate the provisions of federal law. Once in state court, and once the state court violates the Indian Child Welfare Act, there is no method by which the tribe can get back into federal court unless this provision of the Act is held to preserve the tribe's federal court jurisdiction under 1362. The case of England v. Louisiana Board of Medical Examiners does not help in this situation. In that case the United States Supreme Court said that a party could reserve its federal court jurisdiction by filing first in federal court and asking for a remand of the case to state court. The holding of that decision stated, however, that if the party raised any federal court claims in state court, then reversion to the federal forum would be lost. Since under the Indian Child Welfare Act, the Indian party and tribe have no rights under federal law except those which are given by the Indian Child Welfare Act, it would be useless to intervene in a state court proceeding under that principle because the protections of the Indian Child Welfare Act could not be raised in the state court without losing access to the federal forum later on. Since in most cases violation of the Indian Child Welfare Act takes place by ignoring the Act and following state law, tribes will gain nothing by intervening in state court proceedings under such a principle. Therefore, federal court jurisdiction must be clarified under this section.

Section 1915 of the Act should be amended to include some kind of limitation on good cause to the contrary. State court judges are using every imaginable reason to avoid implementation of the Indian Child Welfare Act or return of the child to the reservation or Indian family. While the legislative history to the Act states that this section is intended to preserve the child's right to be an Indian, state court judges are too often ignoring this caveat in the placement of Indian children. This principle specifically applies to section 1915(c), where it states that the preference of the Indian child or the parent shall be considered where appropriate. The states are using this section with parents to have the parent request that the Indian Child Welfare Act not be applied at all, or to request that the child be placed contrary to the preferences of the Act. This intimidation on the part of state courts and agencies was one of the major problems addressed by the Indian Child Welfare Act, and the practice should not be permitted to continue under the placement section as written. The Act states specifically in the legislative history that it is the child's right as an Indian which should control even over parental preference and this principle should be stated explicitly in the Act so that the Act's provisions cannot be avoided. In addition, state courts are using the good cause language to deny placement on the reservation because they think it is too rural, that no doctors are available, and for other culturally inappropriate reasons.

The only other section that I would like to address in terms of amendment is section 1921, concerning the applicability of other laws. This section should be clarified to make it clear that it is intended to help implement the Indian Child Welfare Act, and is not to be used as a means of avoiding the Act's provisions.

III. FUNDING NEEDS

Let me start off the question of funding under the Indian Child Welfare Act by giving a brief summary of two examples of situations I have encountered where the lack of funding resulted in the policies of the Act being frustrated, despite conscientious involvement on the part of the affected Indian tribes.

The first case took place when I was acting as a Staff Attorney for the Indian Law Program of Oregon Legal Services. The fact situation involved two unwed parents. The father was a full-blood Pawnee residing in Oklahoma. The mother had run off with the Indian child to Oregon. The Pawnee father requested that we represent him in his attempts to obtain the return of his child to his natural family. We participated in a series of proceedings in Eugene, Oregon, over a period of two years, in which the state judge expressed extreme reluctance to return the child to what he considered an unknown situation in a distant state where the child would be living with an Indian family. The mother was a confirmed alcoholic and despite repeated attempts at rehabilitation, continued to experience problems in the parenting of her child. Finally, at the end of the two-year period I managed to convince the judge that the need for permanency planning for this child was so great that the mother should be given no more opportunity to rehabilitate herself and instead the child should be returned to the custody of the natural father or the Pawnee Tribe. I had been in contact with the Pawnee Tribe over the course of this two years, and I contacted them to inform them that the child would be returned to the reservation and that they needed to arrange placement for the child. They informed me that the home of the natural father was not suitable for the child at the present time, and that because they had no money in their Child Welfare Program to pay for foster care placement, that they could not arrange a home for the child. Therefore, two years of active court involvement on my part ended up being wasted and the child remained in the non-Indian foster home in Oregon because sufficient funding was not available for placement on the reservation in Oklahoma.

The second situation involved a case I am handling for the Navajo Tribe, involving an independent adoption where the parents are two teenagers. The father is a full-blooded Navajo. The parents were prohibited from seeing each other after their respective parents found out that the non-Indian mother was pregnant, and the Navajo father was informed that the mother was going to have an abortion. His first information that a child had been born was when he received a call from the California Department of Adoptions two months after the child's birth, requesting enrollment information and medical information to be used by the prospective, adoptive parents, who were non-Indians, and in whose home the child had been placed within twenty-four hours of his birth. The father immediately informed the California social worker that he wished custody of his child, but was given no indication of how he could proceed to obtain the child's custody. The father's family then contacted the Bureau of Indian Affairs who informed them of several state Indian Child Welfare programs that might assist them. When the family contacted the Los Angeles Indian Center, they were informed that the Los Angeles Indian Center would like to help them but that their attorney had just been released due to a lack of funding. It was only when the Center then referred the family to the Navajo Tribe that an attorney finally got involved in the proceedings and intervened in the case. By that time the child had been in the prospective adoptive home for over four months, and the adoptive parents are now strenuously arguing that: (1) the father made no legally effective effort to obtain the return of his child; and (2) that the long time the child had now been in the non-Indian adoptive home should result in the natural father's request for custody being denied because of the bonding that has taken place between the child and the non-Indian adoptive parents.

These cases point out the critical needed for adequate funding to permit Indian tribes to assume their responsibilities under the Indian Child Welfare Act. It only takes one case in which a state court judge believes that an Indian tribe is not fulfilling its legal responsibility in a competent manner for that judge to give short shrift to the Indian Child Welfare Act and the rights of tribes and Indian parents in any other proceeding. A good example of this principle involves the child in In Re Birdhead, a Nebraska Supreme Court decision decided in 1983. See, 331 N.W.2d 785. If you read that decision without knowing the facts, it appears that the Standing Rock Sioux Tribe intervened in an ICWA proceeding in Nebraska and then took no further steps to assert their legal rights, the Nebraska Supreme Court ruling that the tribe abandoned its right of intervention and its petition to transfer the proceeding to Tribal court by failing to appear at the trial. However, the real facts of that case are that the Tribe appeared for the first six hearings in this matter, during which time opposing counsel made repeated superfluous motions in order to attempt to drain the Tribe's resources. When the Tribe failed to show up for the seventh hearing, the trial court immediately made a ruling that the Tribe had abandoned its legal right of intervention and transfer.

There are several funding areas that are critical to full implementation of the Indian Child Welfare Act. They can be divided into two categories: on-reservation and off-reservation funding needs. On-reservation funding needs can be succinctly summarized as adequate funding to enable tribes to competently represent themselves in state ICWA proceedings. The Navajo Tribe presents an excellent example of what these funding needs are.

First, there is the need for adequate legal representation. The Navajo Tribe is currently involved in Indian Child Welfare Act proceedings in 19 different states. Because of the rules of each state bar association, the Navajo Tribe must hire local counsel in each state so that representatives of the Tribe may appear in court proceedings taking place in that state. While the Tribe attempts to use counsel that does not need to be reimbursed, such as legal services offices and Indian Child Welfare programs, the lack of adequate personnel has resulted in an expenditure of over $30,000 by the Tribe in the last year to retain local counsel to assist the Tribe in these proceedings. While the Navajo Tribe has made a full commitment to enforcement of its Indian Child Welfare Act responsibilities and protections, many smaller tribes cannot afford this kind of expense, particularly where more than one proceeding is going on in several different states.

The other area in which on-reservation funding is critical involves the social work aspects of Indian Child Welfare Act cases. These aspects can be divided into two parts. First, state court judges need to be assured that adequate placement resources exist if they are to transfer a child to the reservation, and that adequate resources exist to provide the Indian child who is transferred back the services which they require; i.e., psychological services, family support services, parenting classes, etc. The second area of social work in which additional funding is required involves tribal testimony in state Indian Child Welfare Act proceedings in distant states. The tribe is always at a disadvantage, because every time there is a proceeding, tribal personnel must travel long distances while state court personnel are already in the vicinity of the area in which the Indian child is located. Thus, if Tribal social workers need to assess the incidents that have taken place, or to conduct a home study, or if a tribal psychologist needs to interview and evaluate the family, funds for travel and contract expenses for expert witnesses must be expended in order for the Tribe to adequately represent its position in state court. This also implicates the situation discussed above where opposing attorneys will sometimes file continual and superfluous motions to attempt to drain the tribal treasury. Because of these massive expenditures, tribes are often forced to rely on state social work reports and experts appointed by state courts to evaluate Indian families. This is the exact type of bias which the Indian Child Welfare Act was originally enacted to rectify. Without adequate funding tribes cannot present unbiased testimony which will contradict those biased or prejudiced reports submitted by non-Indian state social work or psychiatric personnel.

The second part of this problem, although intimately connected with the first, involves off-reservation funding of urban Indian Child Welfare Programs. When these programs are in operation and are adequately funded, resources exist to assist tribes in distant state litigation which will be unbiased and which will adequately represent the tribal point of view. For instance, if an Indian Child Welfare Act program has an attorney who has been hired to handle Indian Child Welfare Act cases for that program, tribes are not forced into the expensive decision of hiring local counsel. In addition, if that program has social workers and psychologists on staff, those people will be in a position to assist the tribes in resolving a bad family situation due to the fact that they are located in the local area where the family is settled. This resolves the long-distance problems associated with sending tribal social workers and psychologists to distant destinations every time case work needs to be done. Since it is the cases in which the Indian family resides and is domiciled off-reservation which are most difficult for the tribes to resolve because there is no exclusive jurisdiction, it is particularly these cases in which adequate funding of urban Indian Child Welfare Programs is necessary. It is also urban areas where Indian families tend to get into difficulty and this difficulty comes to the attention of state authorities rather than being handled informally by the extended family structure or tribal resources, because those resources are not available. Thus, if anything, it is funding of urban programs that is most critical to successful implementation of the Indian Child Welfare Act, both from an individual and from a tribal viewpoint. The Bureau of Indian Affairs' position that funding should be ended for these urban programs is a complete abrogation of their trust responsibility to Indian people as imposed on that agency by Congress through treaties and the ICWA.

IV. CONCLUSION

The ICWA constitutes a significant congressional commitment to assist Indian families to raise their own children in a culturally relevant family environment. The Act has, for the most part, worked well. With the amendments which we have recommended and adequate funding, the ICWA can fulfill its intended purposes. On behalf of the Navajo Nation, I thank the committee for this opportunity to comment on the ICWA.

Mr. **Alexander**. Our next scheduled witness is Mary Wood, who is the director of the Council of Three Rivers, from Pittsburgh, PA.

STATEMENT OF MARY WOOD, DIRECTOR, NATIVE AMERICAN FAMILY AND CHILD SERVICE PROGRAM, AMERICAN INDIAN CENTER, COUNCIL OF THREE RIVERS, PITTSBURGH, PA

Ms. **Wood**. In correction, I am Mary Wood. I am director of the Native American Family and Child Service Program, which is a program of the Council of Three Rivers at the American Indian Center in Pittsburgh. I am not the director of the center. That director is Russell Simms.

I am really happy to have the opportunity to address some of the concerns that our program has identified in the 2 years that we have been functioning. These concerns are mostly problems with implementation of the act. The failure of service agencies to identify and track Indian clients is an important barrier to service. We have also found the case workers and casework supervisors, who may have received information or training on implementation of the Indian Child Welfare Act, do not always have the opportunity to disseminate such information agency-wide. To counteract this, we have placed strong emphasis on working directly with agency directors or their designees regarding Indian child welfare matters, and we involve them actively in planning appropriate training and technical assistance for their staff.

While there are many points of access for families in the mainstream who are seeking information or support regarding their decision to adopt, these are not geared to Indian concepts or needs. The Native American Family and Child Service Program interprets mainstream services to tribes and Indian families in order to identify and eliminate potential barriers to service. Any prospective adoptive family encounters a bewildering maze of redtape delays and frustrations. But for Indian families, these can present insurmountable barriers.

I have been active in the field of adoption for 15 years, and I am impressed with the tremendous growth of the Indian child welfare program over the past 3 years. We find, however, that the Indian child welfare programs face serious challenges in the fact that they are underfunded, while greater demands are placed on them than on more-established programs. These Indian child welfare programs face complexities of service deliveries, encompassing tribal codes and State statutes, while having unusually high service populations per worker. Although the Indian child welfare workers are dedicated, we are seeking numbers of workers experiencing "burn out" because of their frustrations that are due to understaffing, which is due to underfunding.

Tremendous gains have been made in the development of State tribal agreements. However, we need to place more emphasis on tribe-to-tribe agreements and off-reservation Indian child welfare program agreements in order to establish a strong matrix for the delivery of Indian child welfare services nationally.

We have worked with a number of tribes involved in child custody proceedings in distant States. Off-reservation Indian child welfare programs are uniquely able to assist tribes in the provision of timely and cost-effective child welfare services for their off-reservation tribal members. There is a demonstrated need for specialized training and permanency planning, in preparation of foster and adoptive families, placement dynamics, and post-placement supports. In the past 2 years, the Native American Adoption Resource Exchange, which is a component of our Family and Child Service Program, has found that Indian child welfare programs need urgently additional training and experience in the preparation of Indian foster and adoptive families through group process or through family preparation processes that prepare them for the problems that they will experience.

An understanding of placement mechanics, family and community resources, and pure support systems will enable Indian child welfare programs to better prepare families for placement. Families will gain an understanding of the types of Indian children available for adoption and their special needs, as well as increased appreciation of themselves as resources for these children.

One of our greater areas of concern is the interpretation of the "good cause" clause in the Indian Child Welfare Act, section 101(b), 105(a) and 105(b). We have found that State courts may find "good cause" inconsistent with the substance and the intent of the act. For example, an Eastern seaboard State court recently declined to transfer jurisdiction to a Western tribe, citing their finding that the child in question did not have intellectual capacity to benefit from upbringing within a tribal setting, although the child was at no time determined to be deficient in intelligence.

A Great Lakes region State court refused to transfer jurisdiction to the tribe, arguing that there were "no appropriate" Indian families available for an Indian child, even though the tribe, through referrals made by the Native American Adoption Resource Exchange, was able to show an availability of Indian families. An Eastern State has declined to transfer jurisdiction for a preschool-aged child, based on the argument that the child has resided outside the Indian community for half of her life, and that it would be a hardship to transport the State's witness to the Midwestern tribal court.

State and private placement agencies are often reluctant to look to the preferences set forth in the act in placing Indian children. State and private agencies need to understand the order of preference applies to involuntary relinquishments, unless altered by the child's tribe. State and private placement agencies are not recruiting Indian families in sufficient numbers for the initial out-of-home placement. As a result, an Indian child is often placed outside the Indian community, and due to poor permanency planning, he remains for months—sometimes years—in the limbo of foster care. State courts then find bonding has taken place and find that represents good cause for setting aside the preference of the act and placing the child for adoption with the foster psychological parents.

The final concern I would like to bring to your attention today is the frequent request for services for Canadian Indian children who have been brought to this country for placement within non-Indian adoptive homes. These are frequently very problematic adoptions, where the children are finally becoming involved with local children-and-youth-service offices. These children-and-youth-service offices contact us for assistance with planning appropriate home placement. In those instances where the children are 10 or younger, there may be American Indian families available for replacement. When the young people involved are already teenagers, it becomes increasingly difficult to identify appropriate resources. These children then become the victims of a system where Indian child welfare programs are unable to provide service.

There is a need for the development of procedures that will involve the child's Canadian band in planning. There is also a need to support the efforts of Canadian bands as they develop their own Indian child welfare service system.

In closing, the Indian child welfare program has successfully overcome many challenges but continue to need increased funding in order to provide effective, appropriate, and timely services to Indian children and families. I appreciate the opportunity to be here, and I will answer any questions that I can.

Mr. ALEXANDER. Thank you for your very thoughtful statement. You are located in Pittsburgh, I note. Are you aware of the educational institutions in your area that provide for social work degrees or counseling degrees spending any time on the Indian Child Welfare Act as they train their professionals who will then be members of the State court system?

Ms. WOOD. No, we are not aware that is happening. In fact, we are not aware of any kind of training that has taken place within the State of Pennsylvania for implementing the act. There has not been any kind of a written memo, even, coming down from the State offices concerning implementing the act.

Mr. ALEXANDER. Thank you very much. We appreciate your coming today.

We are going to go slightly out of order to enable someone to catch a plane. Our next witness will be Wanda Sharp, from the Mississippi Band of Choctaw Indians, from Philadelphia, MS.

STATEMENT OF WANDA SHARP, DIRECTOR, CHILD ADVOCACY PROGRAM, MISSISSIPPI BAND OF CHOCTAW INDIANS, PHILADELPHIA, MS

Ms. SHARP. My name is Wanda Sharp, and I am the director of the Child Advocacy Program for the Mississippi Band of Choctaw Indians, a federally recognized tribe that consists of some 4,500 members, located in east-central Mississippi.

It is a privilege for me today to testify in matters relating to the implementation of the Indian Child Welfare Act of 1978. I have had the privilege to administer grant program funds for the Indian child welfare moneys for the past 4 years. However, I have worked in the position I now hold for almost 6 years.

As we know, the Indian Child Welfare Act is a Federal law designed to correct the failure of the States to recognize the tribal, cultural, and social standards found in Indian reservations and families. The basis for the Indian Child Welfare Act is to protect the stability and security of Indian tribes and families by providing for assistance to the Indian tribes and the operation of a child and family service program.

Unfortunately, the effectiveness of such a program has been reduced due to insufficient funding. Over the past 2 years, my staff has been cut in half. Our main focus can only be on that of protective service program to abused and neglected children. However, the fact still remains that much work needs to be done in areas of prevention, adoption, high school dropouts, teenage pregnancy, runaways, incorrigibles, and training paraprofessional staff.

One of the most significant problems is the uncertainty of funding. As this committee is aware, tribes wishing to apply for a grant must spend time in developing proposals that must be evaluated in competition with many other applications. This procedure requires hundreds of hours of staff time to develop another proposal on a year-to-year basis and distracts and interferes with tribal programs meeting basic goals and objectives. I think it really would be great if we could extend this to a 3-year funding program.

If I may, I would like to address the specific sections of the act that we feel are problem areas. First of all, notice given to tribes regarding child custody proceedings many times is insufficient. In section 2311 in the Code of Federal Regulations, it spells out the information to be given to tribes. However, we usually receive only the petition, with the name of the child, the date of birth, and the parents' name. A contact person is rarely ever listed in these cases, which requires a lot of our time in trying to track down who it is, to find out more information, to find out if the child is a member of the Mississippi Band of Choctaw Indians or is eligible for membership.

Section 4, regarding the definition of an Indian child, states that an Indian child is an unmarried person under the age of 18 and is either a member of an Indian tribe or is eligible for membership in an Indian tribe, and is the biological child of a member of an Indian tribe. Over the past 2 years, I have found a number of Choctaw children needing services. However, because of the definition of "Indian child," I have no jurisdiction in the matter. Seemingly, if feasible, what is needed is some type of universal definition of an Indian child.

The act at present does not cover a youth who is a deliquent. This has become a really pressing problem on the Choctaw Reservation. The question we face is, who is going to handle a youth with multiple alcohol-related offenses and other delinquency-related problems? In fact, the Choctaw tribal court has put a hold on all deliquents coming to the attention of the Choctaw court, until such time as the tribe can produce a youth counsellor for these minors.

Our program receives an average of three referrals a week on youth-related problems that we are unable to respond to because no provision exists in the Indian Child Welfare Act for delinquency related problems.

As I mentioned earlier, Indian child welfare moneys have funded the operation of the Child Advocacy Program for the past 4 years. Indian child welfare funds have enabled us to meet some of the following objectives, and it has helped us to maintain an ongoing child advocacy protective services program for neglected and abused children, to act as a consultant to the Choctaw Tribal Council in writing children's code, to write an adoption code and present to the tribal council which was approved in 1982, to establish criteria for licensure of Choctaw foster homes, to assist in establishing paternity of illegitimate Choctaw children, to work closely with Choctaw tribal courts and judges, and to find permanent home placement by means of adoption for 54 children, which I might add, over 98 percent have been placed with Choctaw people on reservations and others with other Indian tribes, receive emergency calls on the weekends and after hours, and attend training conferences, and act as matching funds for a title XX day care center, which serves a maximum of 74 children.

Without these moneys, it would have been impossible for our program to have continued. The Mississippi Band of Choctaw Indians still has many unresolved child welfare problems on which the tribe is placing a high priority in finding solutions. The Indian Child Welfare Act offers the best hope for accomplishing these priority goals. Thank you for allowing me to move up my schedule and present testimony. If there are any questions that I might answer at this time, I will be glad to try.

Mr. ALEXANDER. Thank you very much for coming. I hope you make you plane on time.

Our next witness is Tony Robles, from Oklahoma City, OK. Welcome.

STATEMENT OF TONY ROBLES, COORDINATOR, INDIAN CHILD WELFARE ACT PROGRAM, NATIVE AMERICAN CENTER, OKLAHOMA CITY, OK

Mr. ROBLES. Thank you. My name is Toby Robles. I am from the Native American Center in Oklahoma City, the Child Welfare Program.

Mr. ALEXANDER. Your prepared testimony, which the committee has, will be in the record, including all the attachments. We appreciate it.

Mr. ROBLES. I want to talk a little about the profile of the urban communities in Oklahoma. It is mainly the Tulsa and Oklahoma City area. The combined population of Indians in these two areas is about 45 percent of the total population in Oklahoma. Selected census tracts for Oklahoma City show that the Indian families range from 48 to 78 percent below the average income in Oklahoma City. Our own statistics in our child welfare program from 1980 to 1983 show the unemployment rate or the income below poverty guidelines at about 86 percent.

In Oklahoma City and in Tulsa, we have all the tribes that live in each area of Oklahoma, plus others from out of State. Statistics continue to show that the American Indian population is young. Our own N.A.C. social services program listed that there were 565 children 5 years of age and younger. They also had 765 children 21 years of age within those same families. Our own child welfare program statistics for this current year show that the average age for the 41 children we are currently involved with is 6 years old.

I would like to talk a little bit about the tribal child welfare programs. I believe that in Oklahoma, if tribes did not have their legal representation, which would be people from the OKC-N.A. center's legal program and people from the Native American Coalition in Tulsa's legal program, the tribes could not have implemented any kind of action with the Indian Child Welfare Act. Courts in Oklahoma have requested and they still are that way about having lawyers in the courtrooms instead of the social workers or the paralegals. They will not allow a paralegal or social worker to represent the tribe. Without legal assistance, they would not have gotten too far.

Some of the tribal courts in the beginning were not working that well because of staff turnover. They felt that funding was not adequate. This has caused some problems with the tribal courts, because they have had cases that are still pending from 2 and 3 years ago. Some of the children were not even placed with the extended family; they have been placed with other tribal members, and this is still going on.

Nowadays they have been talking to some of the tribal child welfare programs, about doing tribal-custom adoptions, instead of doing the American-system adoption that we are used to today.

State courts are beginning to come around to complying with the act. Some of the rural judges are very rude to the lawyers that represent the tribes, to the tribal child welfare workers, and other people that are involved with the tribe. They have had to litigate the constitutionality of the act when it first came out. There are problems with the State courts denying transfer cases to the Court of Indian Offenses. We have heard a lot of complaints about that, and we are basically in the same situation as many of them because of the "good cause" clause.

Intervention in Oklahoma courts is allowed today, but as I said earlier, most tribes would not have been able to unless they had a lawyer to represent them in court, represent many of the smaller tribes in Oklahoma, and they are the ones we are worried about because they do not have the money to retain an attorney to represent them in State courts. There are only about four tribes in Oklahoma that have their own Indian child welfare attorney.

I have heard people talk about the consents, voluntary consents, for the termination of parental rights. One of the things that we have talked about in our office and with some other people is that most of these consents are done by single mothers. Consents are usually done by the DHS workers, the welfare workers. One of the things that the mother will not say sometimes is the name of the father, and the DHS workers will not insist on finding out who the father is.

We have been involved in a couple of cases where we have asked the mother to give the name of the father so that we can get his paternity affidavit signed, and if he wants to, he can relinquish his own rights. But if you do not get the father's name on that birth certificate, that child will lose his blood quantum, and he will never be able to have a heritage, once the termination is done by the single parent.

I would like to give you some statistics from Indian country with Indian children under State jurisdiction. In October 1979, there were 717 children in State jurisdiction. Today, there are 717. In Oklahoma County, in November 1981, there were 154. Today, there are 79. Oklahoma County and Tulsa County, which makes up the largest population—makes up a big population of the State—is the most active in DHS custody of Indian children, with about 20 percent of all the Indian children in DHS custody coming from Oklahoma County and Tulsa County.

There are letters of support from different tribes, and I want to read this one, a short first paragraph. This is from the Muskogee Nation:

> This letter is to express the Muskogee Nation's appreciation to the Indian Child Welfare Program for its assistance in serving the needs of citizens of the Muskogee Nation that reside in the Oklahoma City area. As you know, the Muskogee Nation has inadequate resources to intervene in child custody cases outside the Muskogee Nation. It is only through programs like yours that we are able to protect the rights of citizens in urban areas.

There are many tribes that say the same thing to us. We have other letters in here from tribes that say the same thing. We have letters from the public defender of Oklahoma County, the district attorney of Oklahoma County, the judge, the presiding judge of the Juvenile Division of Oklahoma County, who say the same thing. I hope you can read these sometime, because they are the ones who know.

Mr. ALEXANDER. As I mentioned, all the letters will become part of the record.

Mr. ROBLES. I just want to say that they know what the needs are, and they realize that we are in very important urban areas, as well as for tribes around the country or around the State. We have been to about 20 different district courts in Oklahoma with our program. Ethel Krepps here is from the other center in Tulsa that provides legal services also.

Mr. ALEXANDER. In your experience, have you found that the Oklahoma Indian Child Welfare Act, which was passed in 1982, has made much of a difference in how the State and local court systems cooperate with you, or the lack thereof?

Mr. ROBLES. Not really, because some of the judges do not even recognize the need for the Federal act. We have had judges tell us that before, that they do not believe in the Federal act, and we have had to educate them just by being in court litigating cases. That is what we have done in the past 4½ years. I think that we made a great impact in Oklahoma County, which has affected some of the other counties because of the caseload there. We have been able to do lots of litigated training.

Mr. ALEXANDER. You see your presence, more than the State statute, as providing the change that you said is slowly coming about in Oklahoma. Is that fair?

Mr. ROBLES. Yes.

Mr. ALEXANDER. Thank you very much. We appreciate your testimony.

[The prepared statements, with attachments follow. Testimony resumes on p. 206.]

PREPARED STATEMENT OF TOBIAS ROBLES OF THE NATIVE AMERICAN CENTERS CHILD WELFARE PROGRAM OF OKLAHOMA CITY, OK

My name is Tobias Robles and I am a representative of the Native American Centers Child Welfare Program in Oklahoma City, Oklahoma.

In September 1979, the American Indian Lawyer Training Program wrote:

"In promoting and maintaining the integrity of society it would seem that laws would be necessary to insure the happiness and peace of mind of children. For almost two centuries Indian children have endured negative influence upon their lives by political and social hostilities. The Indian Child Welfare Act of 1978 was passed into law to prevent the unwarranted breakup of Indian families and to give tribal governments substantial authority in determining child custody matters. The script has been written. The actors must now be readied for meaningful performances. The Act has designated operative roles to tribes, states, and federal agencies. It calls for a cooperative effort spirited by good faith of all parties involved. If these roles are not carried out in a concerned manner, the objectives of the Act cannot be realized."

Well, four and a half (4½) years later, the Tribes have been cooperative, the States have been semi-cooperative as has the Bureau, but now the federal people are asking for $0 appropriations for urban program or off-reservation Indian organizations for FY-1986. This is not cooperative, this is not good-faith, this is not within the spirit of the law and according to many it is not in the "best interest of Indian children," Indian families and the Indian Tribes.

OKC URBAN INDIAN COMMUNITY PROFILE

Oklahoma City's 1980 M.S.A. Indian population is 24, 752 ranking about third in the United States. Tulsa population is . The combined totals make up % of total Indian population living in urban areas. OKC is 15.4% of the population.

Selected Census Tracts show the average income for Indian families ranges from 48% to 78% below the average income for OKC. Since April 1980, our Indian Child Welfare program has recorded the rate of poverty for parents, parent, or Indian custodians. From that date to December 1983, the unemployment rate or income below poverty guidelines has been an average of 84% Some months the percentage rate has been 100% unemployment. The N.A.C.'s Legal Program had 550 legal intakes for 1983. Of those 61% were unemployed or income below poverty guidelines. The N.A.C.'s Social Services Program assisted 755 families. Of those 97% were below poverty income guidelines or unemployed.

Statistics continue to show American Indians being a young race. The NAC's Social Services program had listed that there were 565 children 5 years of age and younger and they also had 765 children 21 years to 6 years of age within those families. Our ICWA Program statistics for this current year show the average age for the 41 children involved to be 6 years old.

The Department of Health & Human Services, Administration for Native Americans funded a study for the Oklahoma City Native American Community entitled, NATIVE AMERICAN COMMUNITY SERVICES REPORT. While it is not possible to submit the complete 487 page report, the "Highlights of Findings" show the gaps and barriers to existing services in the Oklahoma City area.

* The Oklahoma City Native American community is "without" almost 10% of the services that should be available to it.

* The Oklahoma City Native American Community is "without" a significant percentage of services that should be available for:

- Political Participation
- Recreation
- Child and Family Services
- Aging Services
- Emergency Medical Services

  - Mental Health Services
  - Nutrition Services
  - Veterinary
  - Energy Services
  - Transportation

* The most frequent barriers to delivering available services to the Oklahoma City Native American community:

  - Unaware of existence of service
  - Unaware of how to obtain service
  - Unaware of need or importance of service
  - Insensitive to Native American needs
  - Prejudiced against Native Americans
  - Insufficient Native American personnel
  - Overall, doesn't get results/meets needs
  - Unable to pay direct costs
  - Unable to pay for transportation
  - Lack of transportation to/from provider

* The Oklahoma City Native American community is also "without" established extra-community linkages for planning"

  - Economic Development
  - Disease Prevention, Detection Diagnosis, Treatment and Rehabilitation
  - Residential Environmental Control
  - Hazardous Substance Control
  - Housing
  - Energy
  - Communications.

& Tulsa

The OKC Indian Community representations all Tribes in Oklahoma and other Tribes from out of state. Urban Indian families don't know anything about the Act and many, many lawyers don't know anything at all about the Act. Those families involved in the legal process deserve and have a right to the best legal representation to prevent the breakup of their family according to the Act.

The Act is here because of unwarranted removal of Indian children from their by families by nontribal public and private agencies. Now the Federal people are not willing to fund off-reservation Indian ICWA programs. They don't realize or recognize the essential relations the urban Indian families and the urban Indian organizations have the Tribes.

TRIBAL CHILD WELFARE PROGRAMS

The last four years have taught us all how important extensive legal counselling and representation of the Tribes is to implementation of the Act and protection of individual children. Social workers and para-legal workers in individual tribal programs have realized that the whole area of "protective services" is so permeated with state laws and lawyers - at least as administered by white agencies and courts that advice of a lawyer may be a daily need. Questions arise in regard to law as it pertains to guardianships, adoptions, etc., which require more knowledge of law than they possess. The judges hearing the cases have not responded to the Tribal worker or give them very little merit in the courtroom, they listen to lawyers.

The representation of Tribal Child Welfare Programs at Show-Cause hearings, Pre-Trial hearings, Motion hearings, and Transfer of Jurisdiction hearings is of maximum importance. In cases where Transfer is denied, the Tribe must be represented at Adjudicatory hearings, Dispositional hearings and any further hearings including Appeals. State court proceedings which go through without transfer or early dismissal may last up to a year and a half.

Only a few of the largest Tribes can afford to hire Indian Child Welfare attorneys. And even still they will ask urban ICW programs for assistance with Tribal members. If only a handfull of Tribes can hire ICW attorneys, what happens to other Tribes that need assistance in their own area and in the urban areas. Those that can't afford a good, knowledgable ICWA attorney. Attorneys representing individuals under the Indian Child Welfare Act must be attorneys working with and for Tribal child welfare programs.

STATE COURTS/I.C.W.A.

Voluntary state court compliance with the Act is still the exception not the rule for prosecutors and judges in many of the state courts. Most of these officials simply do not believe in the Indian Child Welfare Act, if they did the need for our services would already have diminished.

We litigated the Constitutionality of the I.C.W.A. before a three judge panel in Oklahoma City, that determined the Act was constitutuinal. Despite that ruling the State has continued to object to the Acts Constitutionality. Also when there seems to be the possibility of mandatory compliance with the law, interpretations of the Act which obviously thwart its purpose are developed. The phrase "good cause" is till stretched to keep an Indian child with white foster parents alleging that a year and a half with them might mean trauma in relocating to an Indian family. In other cases, transfer to the Court of Indian Offenses was denied because the state judge found the C.I.O. was "not capable of taking jurisdiction" and this is "good cause." "Intervention" is allowed by the Courts but Tribes must have a lawyer in order to speak to issues in court.

The voluntary terminations of parental rights in the courts are usually written but not recorded, and the consequences of the consent are sometimes not fully understood by the parents or parent. Most of the voluntary consent are by young, unmarried, not too educated women, and in some cases their FIRST language was their own Tribal language. Also in these types of parental terminations, the mother will not name a father. When this is done the blood degree of the child will be lost forever. We have been talking to everybody involved in these terminations to at least try to establish paternity. And who knows maybe the father may want his child and if not at least the child will have the Indian blood degree.

Courts have not been willing to require the state to actively develop and certify Indian foster homes as required by Section 1912 (d) of the Act. There are numerous other examples (voluntary and involuntary placements or terminations notices to Tribes and extended families; placement preferences; state/tribal agreements; adoption record keeping), where the State courts, the prosecutors and individual case workers violate Indian families and Tribes' rights under the federal Act, the Oklahoma Indian Child Welfare Act and the United States Constitution in such a way that appeal is the only way to keep them from gutting the Act in Oklahoma.

STATISTICS/INDIAN CHILDREN IN D.H.S. CUSTODY

In October, 1979, there were 774 children identified as being of Indian heritage for whom the Oklahoma Department of Human Services assumed legal custody and/or supervision in all types of living arrangements. During the next three years and after the enactment of the Indian Child Welfare Act, the number of Indian children in D.H.S. custody rose to 896 in July, 1982. That is a 16% jump in State activity. Since July 1982, to November 1983, the number of Indian Children in D.H.S. custody declined by 179 to 717 children. That is a 20% decrease of children in D.H.S. custody.

Some of the DHS statewide living arrangements in November 1981, were 305 Indian children living in their own home, 148 living with relatives and 209 living in DHS Foster homes. These same statewide living arrangements for Indian children for December 1982, were 208 children living in their own home, 159 living with relatives and an increased 242 living in DHS foster homes. For November 1983, the living arrangements for our children were 212 Indian children living in their own home, 144 living with relatives and 235 in DHS homes.

This program's basic target area is Oklahoma County. In November 1981, DHS had 154 Indian children in their custody. The living arrangements at that time were 45 living in their own home, 15 living with realtives and 42 living in DHS foster homes. According to DHS December 1982 statistics, the Department had decreased Indian children numbers to 115. The living arrangements are 21 in their own home, 16 in relatives home and still 42 living DHS foster homes. In November 1983, the number of Indian children in DHS custody is reduced to 79.

Oklahoma County has the largest number of Indian children in DHS custody. According to statistics, since November 1981 to November 1983, the DHS custody of Indian children decreased by 50%. This decrease is significate in itself, that the busiest county in the State felt an impact due to working Tribal programs and this urban Indian legal services.

NATIVE AMERICAN CENTER INDIAN CHILD WELFARE PROGRAM

The Indian Child Welfare program was first funded in July 1980. Since that time this program has been involved in approximately 320 Indian child welfare related matters. We have referred 40 cases to other attorneys, agencies, or Tribal programs. This program has transferred approximately 80 cases to the Court of Indian Offenses at every court site and other Tribes. Our program has been Court appointed Guardian Ad Litem in 25 cases by the Indian Judges. Between January 1982, and March 1984, the program had scheduled 315 I.C.W.A. court hearings in various District Courts and the Court of Indian Offenses. The Program has also assisted or worked for 20 of the Tribes in Oklahoma and 4 Tribes from out of state. We have logged over 23,000 miles working for Indian families and Tribal program in the State. We have litigated ICWA cases in 20 District Courts. We are presently involved in 2 Federal Appeals. We have examined Tribal Child Welfare Codes. We have worked with Tribes and the State Welfare Department in hammering out a "sample" State/Tribe Agreement. Now the Tribes want to contract for State-federal funds for families under the jurisdiction of the Federal Indian Courts and for families located on Federal Trust land but the State refuses and they use a Federal excuse.

Keeping Indian families together, advocating for Tribal programs and helping the Courts to implement the Act is what we are doing. And we are doing it with the minimum of funds

Este Maskoke Emahaka Hayo

Geoffrey Standing Bear
General Legal Counsel

Muscogee (Creek) Nation
Office of Justice

December 27, 1983

Legal Department
Native American Center
2900 S. Harvey
Oklahoma City, OK 73109

Dear Toby,

This letter is to express the Muscogee (Creek) Nation's appreciation to your Indian Child Welfare Program for its assistance in serving the needs of citizens of the Muscogee Nation that resides in the Oklahoma City area. As you know, the Muscogee (Creek) Nation has inadequate resources to intervene in Indian Child Welfare cases outside of the Muscogee (Creek) Nation, it is only through programs like yours that we are able to protect the right of citizens in urban areas.

I sincerely hope that you receive funding to continue your program, a denial of funding to your program would directly harm the interests of the Muscogee Nation.

Sincerely,

Geoffrey Standing Bear

Geoffrey Standing Bear
General Legal Counsel

GS/kr

Creek Nation Tribal Capitol Complex - Hiway 75 at Loop 56 - P.O. Box 580 - Okmulgee, Oklahoma 74447 - 918-756-8700

CHEYENNE & ARAPAHO
Indian Child Welfare Program

P.O. Box 38
Concho, Oklahoma 73022
(405) 262-0345
1-800-522-3577

January 11, 1984

Toby Robles, Coordinator
Child Welfare Program
Legal Program
2900 S. Harvey
Oklahoma City, Oklahoma 73109

Dear Mr. Robles:

I appreciate the opportunity to respond in providing a support letter in behalf of your program. During the past seventeen months I have had the pleasure of working with your legal staff in the area of Indian Child Welfare . I have found the staff to be very dependable and competent.

I appreciate their assistance in legal representation of the Cheyenne-Arapaho Tribes of Oklahoma. I commend your staff on the committment and dedication in the area of Indian children and families that become involved in child custody proceedings.

Sincerely,

Winnifred E. White T

Winnifred E. White Tail
Indian Child Welfare Coordinator

Kiowa Tribe of Oklahoma

POSTAL BOX 361 • CARNEGIE, OKLAHOMA 73015 • 405/654-2300

December 27, 1983

Mr. Toby Robles, Child Welfare Cooridinator
Native American Center
2900 S Harvey
Oklahoma City, Ok 73109

Dear Mr. Robles:

Since the Kiowa Tribal Complex is located ninety miles from Oklahoma City, OK, and we have Kiowa Tribal members who reside in your area, or who may become clients of your program and others who have already benefited from your child welfare services, we support your efforts of service to Indian children in your area.

For the next year, the Kiowa Social Service Department, Kiowa Child Welfare Program is looking forward to working with you and your staff. We support your efforts and encourage you to continue to serve the Indian Population in the Oklahoma City, Ok area.

If you have any question, please call this number at (405) 654-2300 extention 232.

Sincerely,

Julia Roubideaux
Julia Roubideaux,
Kiowa Child Welfare Specialist

Clara Chanate
Clara Chanate
Kiowa Child Welfare Caseworker

JR/jr

ABSENTEE SHAWNEE AND SAC & FOX TRIBES
Indian Child Welfare Program
Route 5, Box 144
Shawnee, OK 74801

December 20, 1983

TO WHOM IT MAY CONCERN:

This letter is to recommend the Native American Center, Indian Child Welfare Program, located in Oklahoma City, Oklahoma, be considered for continued funding under the provisions of Title II, ICWA for the fiscal year 1984.

The Native American Center has made significant contributions to our tribal programs. Legal assistance has been provided to a minimum of twelve (12) families and at least thirty (30) children. The legal assistance has been most helpful to our tribal families.

We highly recommend this program for continued ICW funding.

Sincerely,

Thomas J. Dry

Thomas J. Dry
Program Director

KICKAPOO TRIBE OF OKLAHOMA

Post Office Box 58
McLoud, OK 74851

Administration (405) 964-2075
Health Services 964-2074

CHILDREN AND FAMILY SERVICE PROGRAM

January 6, 1984

TO WHOM IT MAY CONCERN:

The Legal Program of the Native American Center and its Indian Child Welfare activity is of inestimable value to individual Indian persons and to the tribes in Oklahoma.

The quality of service and the consistency of attention to Indian Child Welfare matters which we have observed of the Program, for several years now, certainly enhances the confidence we have in the capabilities of its staff.

We would charactarize the Program and its staff as being among the most knowledgeable and experienced in legal aspects of Indian Child Welfare in the country.

There is no question, this is an extremely worthwhile and vital program which more than justifies funding under provisions of Title II, ICWA.

We recommend its continued funding for Indian Child Welfare activity for fiscal year 1984.

Sincerely,

Vernon T. Ketcheshawno

Vernon T. Ketcheshawno
Program Director

Dec 23-1983

Toby Robles
Indian Child Welfare
Native American Center
2900 S. Harvey
Okla. City 73109

Dear MR. Robles,

I want to write this letter to Thank you Albert, Doug. for the Assistance given me and my child in Oklahoma County. Ive never been in this type of trouble, I didn't no what to do, I didn't have any money, But some how I found you Guys and you helped me out. I'm going to try and do better for myself and I hope you Guys can keep up the good work.

Thank You
Brenda Haney

PUBLIC DEFENDER OF OKLAHOMA COUNTY
409 COUNTY OFFICE BUILDING
320 ROBERT S. KERR AVE.
OKLAHOMA CITY, OKLAHOMA 73102
405-236-2727 EXT. 582

T. HURLEY JORDAN
PUBLIC DEFENDER

ROBERT A. RAVITZ
FIRST ASSISTANT PUBLIC DEFENDER

January 3, 1984

Tobias Robles, Director
Indian Child Welfare Program
Native American Center
2900 South Harvey
Oklahoma City, Oklahoma 73109

Dear Mr. Robles:

I am writing this letter in support of continued funding of the Indian Child Welfare Program of The Native American Center in Oklahoma City. The legal staff of The Native American Center has been an active party in implementation of The Indian Child Welfare Act in the District Court of Oklahoma County and has provided numerous Indian families with quality legal representation in situations we all realize are difficult for all the people involved. They have also assisted numerous Indian Tribes in asserting their interest in Child Welfare proceedings.

The participation of the staff of The Native American Center has provided a cultural bridge that has assisted in developing coordination between state agencies, Indian tribes and organizations.

The Native American Center is the only organization in the Oklahoma City metropolitan area providing Indian people with this type of representation and my experience in working with them in court proceedings over the last several years has impressed me with their competence and dedication. I highly recommend their Child Welfare Program for continued funding.

Sincerely,

T. Hurley Jordan

T. HURLEY JORDAN
Public Defender

THJ:mk

1907

ROBERT H. MACY
DISTRICT ATTORNEY
OKLAHOMA COUNTY

SEVENTH DISTRICT
STATE OF OKLAHOMA

519 COUNTY OFFICE BUILDING
OKLAHOMA CITY, OKLAHOMA 73102
(405) 235-8522

January 3, 1984

Tobias Robles, Director
Indian Child Welfare Program
Native American Center
2900 S. Harvey
Oklahoma City, Oklahoma 73109

Dear Mr. Robles,

I am writing this letter to highly recommend the continued funding of the Indian Child Welfare Program of the Native American Center in Oklahoma City.

I will be brief in my remarks. There is no question that the legal staff of the Center has provided a critical service unavailable elsewhere. My dealings with the staff, particularly Doug Parr and Barry Benefield, have repeatedly demonstrated their dedication and competence.

I have no hesitation in urging your continued support of this vital program.

Sincerely,

Robert H. Macy
Robert H. Macy
District Attorney

RHM:kak

DISTRICT COURT
OKLAHOMA COUNTY, STATE OF OKLAHOMA
COUNTY COURT HOUSE
OKLAHOMA CITY, OKLAHOMA 73102

CHARLIE Y. WIER
ASSOCIATE DISTRICT JUDGE

January 4, 1984

Tobias Robles, Director
Indian Child Welfare Program
Native American Center
2900 S. Harvey
Oklahoma City, OK 73109

Dear Mr. Robles,

As presiding Judge of The Juvenile Division of The Oklahoma County District Court, I am writing this letter in support of continued funding for The Indian Child Welfare Program of The Native American Center in Oklahoma City.

The legal staff of The Native American Center appears before This Court in numerous cases involving the welfare of Indian children. They have played and continue to play an important role in advancing the implementation of The Indian Child Welfare Act (25 USC 1902 et seq.). The representation they provide for Indian parents and on behalf of Indian tribes has always been of high quality. The unique experience and expertise of The Native American Center in working with Indian people has contributed significantly to developing the necessary understanding and coordination among state agencies, Indian tribes, Indian families, and The Court that is enabling us to address the best interest of Indian children in the cases that come before This Court.

I strongly urge funding of this important program and the continuation of the excellant work they do on behalf of Indian families.

Sincerely,

Charlie Y. Wier

Charlie Y. Wier
Associate District Judge
Presiding Judge Juvenile Division
Oklahoma County District Court

JAN. 74

Dear Mr. Robles,

I am writing you this letter of my appreciation in your taking interest in my case and also that I at this time cannot afford an attorney at this time in helping me.

I would also like to thank the Tribal court in excepting to hear my case, and would consider to meet any requirements that they might suggest depending in having my Children back together with me, I do love them both and want to be with them.

I myself am trying hard to get the problems that I had had resolved.

Thank you

Dennis [illegible]

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
COURT OF INDIAN OFFENSES
SHAWNEE AGENCY

IN REPLY REFER TO:

April 19, 1984

Mr. Toby Robles
Native American Center
Indian Child Welfare Program
2900 South Harvey
Oklahoma City, OK 73109

Dear Mr. Robles:

Your advocacy for Indian families and Indian children in our State courts and Tribal courts is certainly recognized and appreciated. I would like to express my support for the continued funding of all off-reservation Indian Child Welfare Programs.

Sincerely,

Rebecca Cryer

Rebecca Cryer
Magistrate

Oklahoma Indian Legal Services, Inc.
3033 North Walnut, Suite 103W
Oklahoma City, Oklahoma 73105

(405) 528-5500

January 24, 1983

Mr. Raymond V. Butler
Division of Social Services
Bureau of Indian Affairs
1951 Constitution Avenue
Washington, D.C. 20245

Dear Mr. Butler:

I am writing this letter in support of the Indian Child Welfare program of the Native American Center in Oklahoma City. This program has been in existence for three years, and has served the large need for legal representation not only in Oklahoma City, but in many other areas of the state. It serves parents and tribes individually, and also provides guidance for the tribal Child Welfare programs, including participation in negotiations with the State for a tribal/state agreement which authorizes state payments of foster care to tribally licensed Indian homes. It is my understanding the Native American Child Welfare Program has handled the largest caseload of Indian clients in the state this past year.

I have worked with the legal staff of the Native American Center for a number of years, and have always been impressed with their dedication in serving Indian clients. I have worked especially closely with them during the past year on various Indian Child welfare matters, and recommend their Child Welfare Program highly.

Sincerely,

Susan Work Haney
Susan Work Haney
Attorney

SWH:dw

Wichita And Affiliated Tribes
P.O. Box 729
Anadarko, Ok. 73005
Tel 405/247-2425

Wichita
Keechi
Tawakonie
Waco

January 7, 1983

Dear Toby,

The Wichita Indian Child Welfare Program would like to extend a big "Thank you", to you and your program, which operates out of the Native American Center.

Thank you for all the legal advice and counsel that you provided for our program during this past year. Your organization has been a tremendous help in solving legal questions by tribal members, involving different issues.

This tribe is alarmed to hear that the Urban programs set up for the Indian people in the metropolitan areas would be getting done away with by the current presidential administration during FY'83.

It is our desire that your program continue to operate and be available for services to the Indian people for an indefinite period of time.

Respectfully,

Lance E. Silverhorn

Lance E. Silverhorn,
Coordinator ICW Program

Legal Assistance Project for the Cheyenne Arapaho Tribes

LEAPCAT

301 SOUTH 8TH
P.O. BOX 173
CLINTON, OKLAHOMA 73601
405/323-4110
323-4111

TO WHOM IT MAY CONCERN:

Implementation of the Oklahoma and Federal Indian Child Welfare Acts is crucial to prevent the further disintegration of Indian nations. As with any legislation, these Acts will remain unenforced unless Native American people have vigorous advocates who can work toward their enforcement in child welfare cases.

As attorney for the Legal Assistance Project for the Cheyenne/Arapaho Tribes, I am aware of the lack of knowledge of the terms of the State and Federal Child Welfare Acts among State court judges, district attorneys, social workers and private attorneys. I am also aware of the expertise of the legal staff of the Native American Center and their excellent performance on behalf of Indian people in these cases.

Since there are few advocates in Western Oklahoma with comparable commitment and expertise in an area where the need is so great, I urge your financial support of this project.

Sincerely,

Carol Crimi
Carol Crimi
Attorney at Law

Gene Berryhill
PROJECT COORDINATOR

Carol Crimi
ATTORNEY-AT-LAW

Diana Humphrey
STAFF SECRETARY

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ANADARKO AREA OFFICE
P.O. BOX 368
ANADARKO, OKLAHOMA 73005

IN REPLY REFER TO:
Social Services

MAR - 2 1984

CERTIFIED - RETURN RECEIPT REQUESTED

Ms. Millie Giago, Executive Director
Native American Center, Inc.
2900 S. Harvey
Oklahoma City, Oklahoma 73109

Dear Ms. Giago:

Your application for Fiscal Year 1984 Funds under Title II of the Indian Child Welfare Act has been carefully reviewed and rated by the Area Selection Committee, reference 25 CFR 23.21 and pages 28 and 29 of the application guidelines. Based on the committee evaluation and recommendations, your application has been given preliminary approval. The average rating score given was 92, and ranked 3 out of fifteen approved applications. The Committee recommended funding in the amount of $38,000.00 to serve 115 persons as the unduplicated service population.

In view of the fact that the Anadarko Area is being allocated $51,720 less in Fiscal Year 1984 than was received in Fiscal Year 1983 and in keeping with the intent of the Indian Child Welfare Act, the following guidelines for funding are being established as Area policy. Therefore, when submitting your revised budget please stay within the stated guidelines.

1. Indirect Cost must not exceed 10% of allowed funding.
2. No out-of-state travel allowed unless directly related to a child welfare case.
3. Per sq. ft. cost for office rental space must be specified in budget narrative.
4. Purchase of office furniture or equipment will not be allowed.
5. No stipends or reimbursement for travel of child welfare board members to attend board meetings will be approved.
6. Funding for consultants and training must be justified and will be closely monitored. Budget narrative should clearly justify proposed expenditures in these areas.

You are hereby advised of your right to appeal this decision to the Deputy Assistant Secretary - Indian Affairs (Operations), in accordance

SUPPLEMENTAL TO
TESTIMONY PRESENTED BEFORE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
APRIL 25, 1984, WASHINGTON, D.C.

My name is Tobias Robles and I am a representative of the Native American Center's Indian Child Welfare Program in Oklahoma City, Oklahoma.

Oklahoma is #2 in the Nation in State total Indian population. The State of Oklahoma has two major metropolitan/urban areas. They are Oklahoma City and Tulsa. Each of these urban cities have an Indian child welfare program that provides legal services for Indian child welfare act related matters. Approximately 40 percent of the state total Indian population lives in these areas and it tells according to the Oklahoma Department of Human Services statistics on Indian children in the custody of the Department. In December 1982, 22.4% of the statewide total of Indian children in DHS custody were in the urban areas. In November 1983, 18% was the statewide total for these two areas. Just the population percentages alone, says Congress must fund the urban programs. Many people believe it is unlawful not to fund the off-reservation programs and I must agree.

This program would like to provide Proposed Amendments to the Indian Child Welfare Act.

PROPOSED AMENDMENTS

The first change involves the findings and policy sections, 25 U.S.C. §§ 1901, 1902. Section 1901, Subsection 4 and section 1902 talk about the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in homes which will reflect the unique values of Indian culture. Several courts, including the Kansas Supreme Court in Baby Boy L, have applied this removal language to state that the Indian Child Welfare Act does not apply in a situation where the child has never been a member of an Indian home. Several other courts have rejected this language, namely the California Court of Appeals in the case of Junious M. and the

Arizona Court of Appeals in The Appeal of Maricopa County, but confusion still exist surrounding this language. Applying the word "removal" to the Indian Child Welfare Act excludes all independent adoptions where the child is placed in an adoptive home without ever having been given a chance to be placed with the Indian natural parent or the Indian extended family, and violates Congress' responsibility to protect the potential tribal population of eligible tribal members. While independent adoptions and step-parent adoptions in the context of divorce proceedings were clearly meant to be included within the Act's protections, state courts seeking to ratify an already existing adoptive placement or who are disenchanted with the Indian Child Welfare Act to begin with have in several cases applied this language to exclude such children from the protections of the Act. Therefore, we propose an amendment that the declaration of policy be amended to state: "the establishment of minimum federal standards for the removal of Indian children from their families, the placement of all Indian children who must be placed in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs."

The next section of the Act is the definition of child custody proceedings, 25 U.S.C. § 1903. Again, we are dealing here with the fact that several courts have interpreted the findings of the Indian Child Welfare Act to hold that the Act was only meant to apply to agency removal of Indian children in involuntary child and abuse situations, even though this kind of holding ignores the entire voluntary consent section of the Act. Therefore, in the definition of child custody proceeding, we would add at Section 1903(1) "Child custody proceedings shall mean voluntary and involuntary actions and shall include - ." Then the various types of proceedings should be listed except that under Section 1903(1)(i), foster care placement, it should read "foster care placement which shall include any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution.... and shall include voluntary placement by the parent of an Indian child;" Section 1903(1)(ii) termination of parental rights, should read "which shall mean any action resulting in the termination of the parent-child relationship, including termination which occurs as part of a voluntary adoption;" Section 1903(1)(iv), adoptive placement, shall read "which shall mean the permanent placement of an Indian child for adoption by an agency or by private individuals, including any action resulting in a final decree of adoption."

Under 1903, subsection 6, the definition of Indian custodian must be changed to state "means any Indian person who has lawful custody of an Indian child under tribal law or custom or under state law." This change from the word "legal" to "lawful" is necessary. Since most states have definitions which place legal custody in the state agency, the word "legal" should be changed to that the purpose of the Act is fulfilled, namely that the person who has physical custody under state law and stands in the shoes of the parent is protected from the inappropriate cultural removal of the Indian child from their custody. In one case a state court decided that because tribal custom did not specifically define custody in a relative as "legal custody," the grandparent in that case could not have legal custody under tribal custom and was not an Indian custodian. This opportunity for technical obstruction of the Indian Child Welfare Act must be removed.

Section 1903, subsection 9, addresses the definition of parent, and must be expanded to specifically recognize the rights of biological parents under the United States Constitution. Even though 25 U.S.C. §1921 states that federal law which provides higher protections to the rights of parents shall apply in the Indian Child Welfare Act, several courts have apparently been mystified by the absence of the word parent in the right to intervene under 25 U.S.C. §1911, and have held that since a parent is not the first listed preference under the placement section for the Act, 25 U.S.C. §1915, that parents were obviously not meant to be included within the Act's protection. This distinction is critical in those cases where a non-Indian mother is trying to place her child with non-Indian adoptive parents and states that she does not want her child raised as an Indian, even though she does not wish to raise the child herself. While it seems clear to those of us who practice Indian law that section 1921 protects the rights of unwed Indian parents in the proceeding, a short statement in the definition of parent that says "parents shall have all those rights to which they are entitled under the United States Constitution" will help clarify this confused area for state courts, and will give them less opportunity to avoid the application of the Act's requirements.

Section 1911(c) should be amended to make it very clear that the tribe and Indian custodian have the right to intervene in both voluntary and involuntary proceedings. We would recommend that this intervention section be expanded to include placement proceedings and adoption proceedings. This is because without the right of intervention, a state court will often not know that a tribe has modified its order of placement preference pursuant to section 1915(c), that an extended family member wishes custody of his or her child pursuant to sections 1915(a) or (b), or that a natural parent may desire the return of their child under section 1916.

Section 1912(a) involves the basic contradiction that no notice is required in voluntary proceedings, or that this result seems to be intended by the section. Many states now take the position in voluntary proceedings that if a mother signs a waiver statement stating that they do not wish the Indian Child Welfare Act to apply, notice of any proceedings can be avoided to the Indian tribe. This violates the tribe's right to have a child placed according to a modified order of preference, and violates the right of the extended family to the placement preference order because they are often prevented from coming forward to express their desire for custody of their children. Therefore, I would recommend that subsection (a) be amended to just state simply "in any proceeding in a state court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of or termination of parental rights to an Indian child shall notify the parent or Indian custodian,..'

Notice does not mean intervention and obstruction by the tribe in all instances and if the placement preferences of the Act are followed, there will be no reason to fear tribal intervention in voluntary proceedings.

Section 1913 needs to be amended to state specifically that it applies to independent adoptions where the child is placed directly by a non-Indian parent into a non-Indian home and the Indian family is denied custody. This is the Baby Boy L problem.

Section 1914 must be amended to clarify federal jurisdiction under the Indian Child Welfare Act. It appears from the language of section 1914 that it is the initial state court action violating the Indian Child Welfare Act provisions that gives rise to jurisdiction in any court of competent jurisdiction, including federal court. This rationale, however, runs contrary to the accepted judicial maxim that once in state court, appeal can only be made through the various state courts. Since Indian tribes have a right to original federal jurisdiction under 28 U.S.C.§ 1362, this right to have issues of federal law decided in federal courts should be protected under the Indian Child Welfare Act. However, since it is the obvious intent of the Indian Child Welfare Act that such proceedings take place first in a state forum, the tribe's right under 1362 to get into federal court must be protected. If a tribe were to refuse to go into state court at all and were to file an initial proceeding in federal court, it is likely that the federal court would abstain based on the reasoning that it could not assume that a state court would consciously violate the provisions of federal law. Once in state court, and once the state court violates the Indian Child Welfare Act, there is no method by which the tribe can get back into federal court unless this provision of the Act is held to preserve the tribe's federal court jurisdiction under 1362. The case of England v. Louisiana Board of Medical Examiners does not help in this situation. In that case the United States Supreme Court said that a party could reserve its federal court jurisdiction by filing first in federal court and asking for a remad of the case to state court. The holding of that decision stated, however, that if the party raised any federal court claims in state court, then reversion to the federal forum would be lost. Since under the Indian Child Welfare Act, the Indian party and tribe have no rights under federal law except those which are given by the Indian Child Welfare Act, it would be useless to intervene in a state court proceeding under that principle because the protections of the Indian Child Welfare Act could not be raised in the state court without losing access to the federal forum later on. Since in most cases violation of the Indian Child Welfare Act takes place by ignoring the Act and following state law, tribes will gain nothing by intervening in state court proceedings under such a principle. Therefore, federal court jurisdiction must be clarified under this section.

Mr. ALEXANDER. We will have to vacate this hearing room at 2:30, which gives us about 40 minutes, and we have 6 more witnesses. So I am going to have to hold everybody to a strict 5 minutes.

Michelle Aguilar, from Portland, OR, of the Suquamish Tribe.

STATEMENT OF MICHELLE AGUILAR, INDIAN CHILD WELFARE COORDINATOR, SUQUAMISH TRIBE, STATE OF WASHINGTON, AND CONSULTANT TO THE NATIVE AMERICAN REHABILITATION ASSOCIATION, IN PORTLAND, OR

Ms. AGUILAR. I am Michelle Aguilar, and I am employed as an Indian child welfare coordinator for the Suquamish Tribe in Washington, and I am a consultant to the Native American Rehabilitation Association in Portland, OR. So I am representing both a small tribe and an urban program. Thank you for allowing me to be here today.

Many of the concerns that I was going to speak to have been spoken to already, so I will not take up time reiterating those points. Some are very important, and I do not want to gloss over them. You will receive the information in my written testimony.

Our major concern is funding. We are a small tribe, and I am basically a one-person social service agency. One of the problems I see in the BIA's way of giving grants and allocating funds on the population basis is that there are certain costs that are across the board. One individual costs a certain amount of money in salary, fringe, and indirect. Each program has a basic cost just to set up. That is not going to change whether you have 5,000 people you are serving or 500. One individual still costs a given amount of money.

Another point I want to make in terms of funding is, when you have those basic costs, many of your programs go out the door. One person cannot do it all. There are eight different programs under title II that are eligible for funding. We try and do a little bit of all, but we are basically doing band-aid work and barely keeping the programs together.

I was going to talk about some examples that we have happening, in terms of cases, but I will just go over those briefly. We have a case right now in California. I do not have the funds to go down there. We were not notified that the permanency planning issue was coming up in court until 4 days ahead of the court date, and then notification was not by the State. The State was not even aware that this child had a tribe that he was eligible to be enrolled in. I have contacted the urban program down there, and they have been extremely helpful. Without the urban programs, I personally would not have been able to get to our children in many States where they have come up in court.

This does not include any kind of legal services. This is basically saying: "Hey, this is an Indian child. They are eligible for enrollment. Please notify the tribe." Those kinds of things are really important.

The other thing I wanted to talk about, too, is that we are here to serve the children. The funding issue comes back down to: If a child is from a small tribe or a large tribe, does it make any difference? Is that child any less important? Should they receive any less services because they are from a small tribe? That, again, comes down to the allocation of funds. The issue is the same in regards to the valuable urban programs.

Some of the things that we are not able to do is to make a concentrated effort in recruitment and licensing of foster homes. We are deputized through an urban center to do this because we do not have funds to set up our own program/agency. I do not have adequate money to travel to make all of the home visits, much less the time. As a one-person staff, I do all the administrative work, all the grant writing, all the counseling, all the CPS, all the paralegal preparation and counseling that has to do with our youth code that we have in place at tribal court. I do intervention in the State courts, and I also act as a referral source for the county juvenile courts due to mutual cooperation.

Even being here today is very difficult. It takes time away. It comes down to being a one-person social service agency. The problems are the same whether you are a small tribe, a large tribe, or an urban program. I will give some specifics in the written testimony.

There is one case that I think I would like to have go on record, because it is a tragedy, and we have not heard those here today. I had a 16-year-old client who, for various reasons, was released from tribal court. She had hidden a pregnancy from everybody concerned, and when it was found that she was pregnant, she was asked to leave her mother's home, for a lot of different problems. We were not able to provide this girl with any kind of prenatal care, any kind of parenting education, any kind of support services at a time when she needed them, and she was desperately asking for some Native American culturally relevant types of services. We could only refer to State programs and urban Indian programs. She did give birth to her child in an urban center. I saw the child 2 weeks after birth, perfectly healthy, a wonderful child; 2 weeks later, that child ended up in the emergency room in a hospital, later in intensive care with a virus that had spread into her lungs, causing high fevers and convulsion. I do not right now know if that child is still alive. If that child lives, that child will probably have permanent brain damage from the fever and convulsions.

We have lost one of our children, due to lack of funds and due to the lack of being able to provide the kind of complete services that they needed. Thank you.

[Subsequent to the hearing the following correspondence was received for the record:]

Area Code (206)
598-3311

THE SUQUAMISH TRIBE
P.O. Box 498 Suquamish, Washington 98392

RECE [illegible]

May 21, 1984

Senator Mark Andrew, Chairman
Select Committee on Indian Affiars
U.S. Senate
Washington, D.C. 20510
Attn: Pete Taylor

This written document is respectfully submitted by Michelle Aguilar, Saboba/California Mission, Indian Child Welfare Coordinator for the Suquamish Tribe, Port Madison Indian Reservation, Suquamish, Washington. I am representing the concerns of the Suquamish Tribe and would like to thank you for the opportunity to present testimony on the Indian Child Welfare Act of 1978, (ICWA) P.L. 95-608. We are asking for recognition of and solutions to the problems of implementation of the ICWA and for appropriate levels of funding for operation of such programs under the Act.

The Suquamish Tribe recognizes that there are many important issues concerning the implementation of the Act, most of which have been expressed during the oral testimony and in writing by others. Our testimony is primarily concerned with the critical issue of funding and how it affects the implementation by small tribes. Without an adequate and reliable funding source, other changes and/or amendments to the Act, will not help tribes and urban organizations provide the services that are necessary to meet the intent of the Act.

We are asking that Congress:

...Establish a funding authorization separate from the Snyder Act

...Establish an authorization level of 29.5 million as recommended by the Association of American Indians and Alaskan Native Social Workers

...Provide funding for tribes and urban programs on an entitlement basis rather than a competitive basis

...Mandate funding to be consistent and on a three year cycle

...Establish a method for monitoring and compliance of state and private agencies including enforcement by penalty for non-compliance

...Establish a consistent reporting system for research, information, and entitlement purposes

As Indian people, united on this issue of Indian Child Welfare, we present our case. We maintain that our cause was presented with overwhelming evidence and justification six years ago. This Act, without proper appropriations, is now adding to the problems evidenced six years ago, by causing many complications resulting from tribes and urban programs trying to handle cases without the personnel and available services to do so.

95-608 states that there "is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." The tradition of our people consider our children the link between generations, the carriers of tradition and culture and our assurance that The People will continue to exist. Without adequate appropriations we will continue to lose our children.

The Suquamish Tribe is a small Pacific Northwest Federally recognized Tribe with approximately 530 Indians residing in our defined service area. In the last fiscal year The Suquamish Indian Child and Family Assistance Program has been able to assist approximately 139 clients. The numbers are growing with calls for assistance coming from as far away as Alaska and California. Yet with inadequate funding we are unable to meet the needs of even our small tribe. In terms of establishing programs to meet the intent of the Act it should be recognized that a basic funding level is needed to operate every component of a social service program, and that this is true whether it be a small tribe or a very large tribe. Under Subchapter 11, Section 1931, a minimum of eight types of child and family service programs are listed as eligible for funding; all of these components are important to a successful holistic approach to treatment and prevention of family breakup. In trying to meet the needs of the clients and the intent of the Act, I find I am faced with the task of operating on an approximately 4,000 dollar budget after salary, indirect, and fringe are extracted. In essence this means I am a one person social service agency.

In reality a one person social service agency requires that I:am on call 24 hours a day for crisis intervention, provide counseling to youth and families, conduct all administrative duties including grant application and reports to the BIA, provide CPS and investigations, provide services to the Tribal youth court as well as state and county court involvement, act as a para-legal, and sit on a Local Indian Child Welfare Advisory Committee for the State. I also act as a recruiter and licensing agent for foster homes. These are just a few of the roles of a one person social service agency. These different duties can be a source of conflict within themselves and yet there is not enough money to set up separate units to meet the demands of the ICWA.

Another major need that is absent due to funding restraints, is in prevention through family and youth oriented recreational and cultural activities. Most successful preventative counseling with teens occur in a group environment that is loosely structured, where trust and rapport can be developed. Many clients are resistive to court ordered counseling. Recreational and cultural programs provide the setting that leads to information that can alert the counselor to potential problems and provide a vehicle where intervention strategies and treatment can be developed. In this manner many cases that might not come to attention until a crisis develops and court intervention is appropriate can be resolved in the early stages.

An important and major isssue is the need for the continued support of urban programs. I have called on urban programs many times for services in and out of state on behalf of a child of our tribe. Without them many of our children would fall through the cracks. Currently an out-of-state urban program is helping me with a case that has come before the state court. We were not notified and compliance with 95-608 was non existent until the client was advised to notify the tribe by the urban center and we were able to intervene. This case is still in the state court but with P.L. 95-608 proceedures being followed. Without this urban center, intervention would have been near impossible due to restricted funds and geographical location. This is a case where the intent of the Act is in operation due to cooperation of a tribe, an urban program,and a state.

Other problems that are directly tied in with funding issues include:

- the limiting of foster home recruitment, licensing, and foster parent training and support services
- restrictions in networking with other tribes and organizations
- the availability of community education in parenting and sexual and physical abuse and neglect, including sexual/physical abuse counseling services
- lack of funds for professional training and education
- unnecessary competition in the grant process
- lack of monitoring for compliance and enforcement

We need cooperation in order to function. We cannot constantly be pitted against one another for funds. We need consistency and the means to take care of ourselves. What of all the children whose tribes or urban programs are not funded? Who protects them? Comparatively speaking we are asking for very little. Yet, due to a lack of funding or a separate appropriation, and in spite of a well intentioned law, we are still losing our children.

Mr. **Alexander**. Our next witness is from the Minneapolis Urban Center, Jake Mendoza.

STATEMENT OF JAKE MENDOZA, DIRECTOR, CHILD OUTREACH PROGRAM, MINNEAPOLIS URBAN CENTER, MINNEAPOLIS, MN

Mr. **Mendoza**. Mr. Alexander, you have my testimony in writing, so I will summarize even more than I had planned to summarize.

My name is Jake Mendoza, and I represent the Minneapolis American Indian Center. My title is director of the Indian Child Welfare Act Monitoring Program. I am also considered the Indian Child Welfare Act monitor. What we do is, we monitor Indian Child Welfare Act court hearings. We attend court hearings and ensure that the Indian Child Welfare Act is being complied with. I want to stress that we do not represent anybody. We do not act as an advocate. We are neutral. We are not a party. We only monitor court hearings, and the presiding judge of the Hennepin County Juvenile Court is allowing us to make comments. We do not make recommendations on the merits of cases.

In 1982 to 1983, we were funded by the Bureau of Indian Affairs in the amount of a little over $40,000. We are now being funded by the Minneapolis Community Action Agency which is an agency that helps poor people.

In my written testimony, I have given examples of obstacles, problems that we have had in securing funding from the Bureau of Indian Affairs. I have also given examples of noncompliance and also other examples of other concerns that we have related to the Indian Child Welfare Act.

I know that we are pressed for time, but I want to share something with you. Our program began in October 1982, and from October 1982 to December 17, 1982, we had set up an effective monitoring program. On December 17, we received a letter from Mr. Earl Barlow, who is the area director of the Minneapolis area for the BIA. I would like to read you that letter. It is real short. This is just to show you an example of some of the game-playing and some of the obstacles that are thrown not only to Indian organizations but also Indian tribes that make it difficult to help Indian people and Indian child welfare cases. He addresses it to my supervisor, the director of the Indian center, Mrs. Hallmark:

> Dear Mrs. Hallmark: Thank you for the information which you submitted with your letter dated December 1, 1982. As you know, questions have been raised about the selection of Mr. Mendoza as monitor for the Indian Child Welfare Act grant. Since receiving this resume with your December 1, 1982, letter, we have determined that he does not qualify for the position. We are directing you to expend no further grant funds for this position, since the incumbent does not meet the qualifications of the job description in the approved grant.
>
> The Bureau of Indian Affairs and others interested in the implementation of the Indian Child Welfare Act in Minnesota have been very concerned about the State court's compliance with the Act. There is concern that the tribes are not always notified when children come before the courts. There is also concern that the children who must be placed outside their homes are not always placed in compliance with the Federally-mandated placement criteria. For these and other reasons, we were pleased when the Minneapolis American Indian Center revised its proposal and decided to monitor Indian cases going through the courts. Because of the nature of the job to be done, we approved the revised proposal. We believe that requiring a master's degree, plus experience, is appropriate and request that you comply with this plan. Sincerely, Earl Barlow.

In our proposal, in our job description, we had left out an "or" which would have allowed a nondegreed person to have that job if he was an appropriate person. We did that by mistake. The BIA was technically correct. So the monitor was terminated on December 20. The Bureau had asked us to revise the job description. We, in good faith, revised the job description, submitted it, and on January 7, we received a letter from Mr. Barlow again. This shows the paternalistic attitude of the BIA in trying to run Indian programs, programs that should be run by Indian people.

DEAR MRS. HALLMARK: This is a confirmation of the January 3, 1983, telephone conversation between you and Mr. Smith concerning the need to meet and discuss the contents of the job description for the Indian Child Welfare Act monitor to be employed by the Minneapolis American Indian Center. We have received the revised job description which was submitted with your letter of December 20, 1982. As written, it does not provide enough assurance that the employee would be qualified to carry out the duties and responsibilities of the job. Our personnel staff read the MAIC Indian Child Welfare Act proposal and drafted a job description which we believe is commensurate with the proposal. After you have reviewed this proposed job description, we would be glad to discuss it, if you wish. Due to the great amount of community interest in filling this job, we would like to be involved in evaluating the applications which are submitted or participate in a review of the most qualified applicants. Our involvement would in an advisory capacity, with no intent to assert any authority or responsibility for the Minneapolis American Indian Center. . . .

Then he goes on:

Sincerely, Earl Barlow.

Now, we wanted to get this program going. So in good faith, we accepted their job description. We said, "Fine. You can be part of this process." At the last minute, the day of the interviews, they told us, "It is inappropriate for us to participate," and on February 7, we were allowed to continue our program.

One thing that is interesting is that when we applied for 1983-84 money, we submitted that same job description that they had given us, and when they denied us, one of the reasons was that the job description was too general. They had, in fact, criticized their own job description.

There are a lot of concerns that I have in regard to noncompliance with the act. I will not go into those because many of those concerns have been expressed already. But I do want to say a few words about the statements that were made by the people from the Bureau of Indian Affairs when they are recommending zero funding for urban areas.

There are about 40,000 Indian people in the State of Minnesota; 56.6 percent of them live in the Twin Cities. We only received, for the 1983-84 year period, $64,000. How are we going to provide services for those people; and if we do not, who is going to do it? The tribes cannot come down here. I received a letter from Mr. Bob Aiken from the Minnesota Chippewa Tribe, in response to another issue about section 106. But this is what he says:

There is another point here you must deal with, and that is reality. You know the Act is terribly underfunded and misdirected by the Bureau of Indian Affairs. Most of the off-reservation notices we receive are not physically responded to by our tribe. We do not have the people to do it. This causes an attitude problem, with the agency sending us notices in that we do not attend the court proceedings anyhow. If we were able to respond more efficiently, then I would feel more comfortable in insisting on more formal notice.

I am not only asking for more money for the urban areas, and for that money not to be cut, but I am also asking for more money for the tribes. When I left the Twin Cities, I spoke with Judge Aleski, and I asked him what he wanted me to say in his behalf. He said, "More money for the tribes." I have a lot more to say, but I know that we are really short on time, so if you have any questions I will be more than happy to answer them.

Mr. **Alexander**. We will make sure that your full statement is printed in the record. We should make clear that it has been the committee's position for the last several years to steadfastly oppose the Bureau of Indian Affairs' attempts to terminate funding for urban programs, both in this area and also in its sister agency at the IHS to terminate funding for urban health centers. It has been our effort, along with that of others, that has kept some of the funding in existence.

Mr. **Mendoza**. I sincerely believe it would be disastrous if it were to be cut for Indian people in the cities. Who would they go to? Thank you.

[The prepared statement follows. Testimony resumes on p. 239.]

MINNEAPOLIS
AMERICAN INDIAN CENTER
1530 East Franklin Avenue • Minneapolis, Minnesota 55404
612-871-4555

BOARD OF DIRECTORS
Elaine M. Stately
President
Clyde Bellecourt
Vice President
Judy Fairbanks
Treasurer
Laura Waterman Wittstock
Secretary
Rick McArthur
Chairperson, Business & Technical Advisory Council
Lee Staples
Personnel Chairperson
Charles Robertson, Sr.
Joan Strong
Juanita Espinosa Corbine
Harriett Heisler
Diana Buckanaga Percy

ADMINISTRATION
Elizabeth Hallmark
Executive Director

PROGRAMS:
Adult Education
J.T.P.A.
Chemical Dependency
Circle Newspaper
Congregate Dining
Cultural Arts
Indian Child Welfare
Recreation
Senior Citizens
Sewing Project
Welfare Advocacy
Woodland Craft Store

MAIC INDIAN CHILD WELFARE ACT MONITORING PROGRAM

TESTIMONY

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

APRIL 25, 1984

Distinguished members of the Senate Select Committee on Indian Affairs, thank you for having me here today to give testimony on the status of the Indian Child Welfare Act in the Minneapolis area. Specifically, I will address the problems we have encountered in receiving BIA funds, examples of non-compliance of the Act and related concerns.

The purpose of our Monitoring program is to promote the stability and security of Indian tribes and families by ensuring that the Federal standards for the disposition of child foster care and adoptive cases, as provided by the Indian Child Welfare Act of 1978, are met.

The Honorable Judge Allen Oleisky, the Presiding Judge of the Hennepin County District Court - Juvenile Court Division has cooperated fully with our program and because of his fairness and effort we are allowed to observe all Indian Child Welfare Act hearings in Hennepin County. We do not advocate for anyone. Our only purpose is to ensure compliance of the Act and we do this in a neutral and objective manner.

Our program began operations on October 11, 1982. The first month was spent in training the newly hired Monitor as was provided in our BIA grant. The second month was spent in establishing an effective monitoring system. We were able to get the support of the major Indian organizations in the Twin Cities as well as the support of those local non-Indian groups working on the implementation of the Act. We were monitoring 13 Indian child welfare cases when on December 17, 1982 we received a letter from Mr. Earl Barlow, BIA Area Director which stated, "We are directing you to expend no further grant funds for this position (Monitor) since the incumbent does not meet the qualifications of the job description in the approved grant." We were forced to shut down our operation which meant not being able to help our thirteen clients because technically the BIA was correct. We had accidentally sent the Bureau a job description that was missing an "or". The ICWA Monitor was terminated on December 20, 1982.

The Minneapolis American Indian Center was extremely concerned about this incident because on one hand an outside agency, specifically the BIA, was taking a paternalistic attitude towards MAIC, directing it what to do. On the other hand the Indian Center realized that it had an obligation to the Indian Community to provide a badly needed service. MAIC swallowed its pride, revised the Monitor's job description and immediately resubmitted the description in good faith.

On January 7, 1983 the Minneapolis American Indian Center received a letter from Mr. Earl Barlow of the BIA which stated, "We have reviewed the revised job description which was submitted with your letter on December 20, 1982. As written it does not provide enough assurance that the employee would be qualified to carry out the duties and responsibilities of the job. Our personnel staff read the MAIC Indian Child Welfare Act proposal and drafted a job description which we believe is commensurate with the Proposal. After you have reviewed this proposed job description we would be glad to discuss it if you wish." It is interesting to know that the MAIC and BIA job descriptions were very similar. The Indian Center was anxious to get started on this Monitoring program which meant rehiring a Monitor and accepted the BIA job description.

In the January 7, 1983 letter to MAIC the Bureau also stated, "Due to the great amount of community interest in filling this job we would like to be involved in evaluating the applications which are submitted or participate in a review of the most qualified applicants." MAIC had nothing to hide since the hiring process would involve a point system. The Center Board members would score the applicants and the person with the highest score would be hired. Again, because the Indian Center was anxious to get on with providing a critical service to the community, invited the BIA to participate in reviewing the hiring of the ICWA Monitor. On the day of the interviews the BIA refused to participate in the process stating that it was "inappropriate" that the Bureau be involved. The Indian Center hired its new Monitor.

In early February 1983 the Bureau of Indian Affairs authorized the Minneapolis American Indian Center to proceed with the Monitoring program. On March 23, 1983 MAIC was notified that the Monitoring program would not be refunded for the 1983-84 year period. The Center appealed this decision at the highest departmental level in Washington and lost. One of the reasons for our losing the appeal was as follows. "The position descriptions, namely the Indian Child Welfare Act Monitor and the Monitoring Assistant, are very general." This Committee might be interested to know that the same job description for the Monitoring position submitted to the BIA in our 1983-84 proposal was the same one that the BIA drafted. They in fact critized their own job description.

In a letter dated June 27, 1983 that we received from the Department of Interior regarding our appeal, MAIC was informed that "This is not a direct service activity." Why did the Department of Interior feel that it was appropriate to fund our Monitoring program one year and not the next? We understand that the issue of the Monitoring program being a direct service is arguable. Although we stress to everyone that walks through our door that we do not advocate or take sides in ICWA cases, parents and many times children, with that knowledge, still request our presence in court in efforts to have their rights protected under the Indian Child Welfare Act. In my opinion, we are providing a direct service.

I am here today to inform this Committee that the minimum Federal standards that are suppposed to be followed whenever an Indian child is removed involuntarily from his or her family for placement in foster or adoptive homes are not fully being complied with, at least not in Hennepin County. I am also here to share a few examples of non-compliance with the Act and also to express concerns of issues related to the Indian Child Welfare Act or Public Law 95-608 as it is sometimes referred to.

On the last page of the information submitted to this Committee you will note that our monitoring concept has the full support of the Honorable Judge Allen Oleisky, the Presiding Judge of the Hennepin County District Court Juvenile Court Division.

We firmly believe that the attitude of the court, at least in Hennepin County, is that of commitment towards the Act. Our belief in the commitment of Hennepin County is somewhat different. While there have been expressions, both verbal and written, from higher level Hennepin County staff of their desire to comply with the Act, we have discovered that the expressed desire is not always shared at lower levels.

For example, we are aware of an assistant Hennepin County attorney who has expressed a dislike for our Monitoring program but most important has expressed an unwillingness to cooperate with us to ensure compliance of the Indian Child Welfare Act. This same attorney has not only been uncooperative to us but also to at least four Hennepin County Public Defenders and to two private attorneys who handle ICWA cases. I have been informed by a Hennepin County Public Defender of this attorney's most recent verbally expressed resentment that Indian children are treated differently in Indian Child Welfare Act cases. I often wonder if this type of person should be allowed to handle ICWA cases.

Another problem that our Monitoriing program has discovered, which many times creates unnecessary problems, is the lack of knowledge of the Indian Child Welfare Act by some professionals in positions who should know this Federal law. Included in this distinguished company are judges, referees, assistant county attorneys and most alarmingly public defenders. I would like to add that at least seven Hennepin County Public Defenders are currently meeting on a monthly basis to improve their ICWA knowledge. I commend their efforts and would also like to add that they are meeting on their own without outside pressure.

Let me share with this Committee an experience I had last year. In July of 1983, I received a phone call from a mother who was being investigated by Hennepin County for child abuse. At the time of the phone call an Intake worker from the County was at the mother's home asking questions. The child, an 8-month old little Indian girl, had been taken to the hospital by a babysitter who accused the mother of inflicting cigarette burns all over the child's body. A hold had been placed on the child. The child had no cigarette burns on her body but did have Impetigo. The mother, in tears and frightened that the County was going to take her child away, desparately requested that I monitor the meeting. I normally only monitor court proceedings but under the circumstances I decided to monitor this particular meeting.

The Intake worker was very nice. I explained to the mother and grandmother, who were both in tears, that the Intake worker was only doing her job. I also explained that the County was obligated to investigate every charge of child abuse and that this was to our childrens' benefit. After talking with the mother, the Intake worker found no evidence to substantiate the charge and informed the mother that the child would be released that same day. We all agreed that a nurse would visit the child periodically until the Impetigo went away. I left the meeting with the understanding that the case was going to be closed. Approximately a month later I received a call from an associate of mine and a friend of the above family asking for a meeting between the associate, the family and myself.

The meeting took place and I was alarmed at what I heard. The County had assigned the case to a child protection worker. According to the mother and grandmother the social worker was insensitive and intimidated the family, making statements like "Why would it be on the report if it wasn't true? in reference to charges and problems contained in the family's Hennepin County file. When the mother asked if there had been a second complaint, according to the mother, the social worker replied, "I can't tell you if there's been another complaint.". The mother also said that the social worker told her that because she was unwed, the child was not legally hers or anyones. There was another Hennepin County staff person present and there is no question that the statement was made. The County acknowledges that the statement was made. There is a question as to which Hennepin County employee made the statement. After informing higher level Hennepin County supervisors about this incident and after their own investigation, the County decided to close the case. I applaud Hennepin County for dealing with this problem in a very professional way.

On April 19, 1983 I attended a child custody proceeding involving the foster care placement of a 17-month-old Indian child. The mother of the child had requested that I monitor the case to ensure compliance with the Act.

Prior to the court hearing, outside the court room, I asked the mother of the child if the child's tribe had been notified. The attorney for the mother informed me that she was not aware of any notification. It appeared that the attorney for the mother had minimal knowledge of the Indian Child Welfare Act. I gave her a copy of the Act and showed her the important sections that she should look at.

I walked over to the Assistant County Attorney and asked if the child's tribe had been notified. I was informed that the Minnesota Chippewa Tribe (where the mother is enrolled) had been notified but that they were refusing any involvement in this particular case because the child was not eligible for enrollment.

Realizing that this case would not be covered under the Indian Child Welfare Act, if the child was not eligible for enrollment with a federally recognized tribe, I questioned the mother further. An Indian Advocate from Hennepin County who was also present decided to call the tribe. It was confirmed that the child was not eligible for enrollment.

In questioning the mother we learned that her father was full-blooded Winnebago from Wisconsin. If this was true then the child would be one-quarter Winnebago and eligible for enrollment there. The child would then be covered under the Act.

In the court hearing the attorney for the mother questioned the compliance of the County concerning proper notification of the child's tribe. The Assistant County Attorney informed the court that the county had complied with the Act because "the Act says that a tribe must be notified". I spoke up and read the definition of Indian child's tribe contained within the Act.

> "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe. The Indian tribe with which the Indian child has the more significant contacts."

I also read Section 102 (A) of the Act which states:

> "In any involuntary proceeding in a State court where the court knows or has reasons to know that an Indian child is involved. The party seeking the foster care placement of or termination of parental rights to an Indian child shall notify the parent or Indian custodian and the Indian child's tribe by registered mail with return receipt requested of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined such notice shall be given to the Secretary in like manner who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding."

After carefully going over the Act, the referee ordered that the proceeding be continued for another day and that the Winnebago Tribe be notified. The court had determined that the County was not in compliance. The Indian child's tribe has a right to be notified. If a monitor had not been present in this particular hearing, non-compliance would not have been questioned.

It is my opinion that in this particular case the fault lied with the social worker. It is up to the social worker of the placing agency to investigate and make every effort to determine if a child is eligible for enrollment in any tribe.

Recently I attended a hearing regarding the continuation of this case. According to the Assistant County Attorney an attempt to locate the grandfather proved fruitless. The County sent a notice of the child custody proceeding to the Winnebago Tribe in Wisconsin. According to the Assistant County Attorney, the Tribe had no one enrolled by the grandfather's name.

We argued that the grandfather's name could be different than what was given to the Winnebago Tribe and that the BIA should now make an effort to locate the grandfather's tribe.

The court determined that the County had made a full faith effort to locate the grandfather's tribe. A court hearing was set. This case would not fall under the ICWA. A few days later, with the limited information that we had, we found the grandfather's enrollment. According to the Tribe, the grandfather was full-blooded Winnebago. He was on the 1934 rolls in Nebraska by the name given to the court. We shared the information with the court and the Assistant County Attorney. A notice was then sent to the Tribe.

On December 9, 1982 we attended a Termination of Parental Rights Hearing. The parents were not present because, according to the Assistant County Attorney, they could not be found. According to the County, a notice had been sent to the Tribe and a notice had been published of the hearing in a newspaper. As far as the County was concerned they were in full compliance of the Act. We knew that Hennepin County was clearly out of compliance and at another hearing questioned the County's compliance of the Indian Child Welfare Act. The County informed the court that they had sent certified letters to the child's tribe and both parents, who were separated. A returned acknowledgement of the notice was received from the child's tribe and father. They informed the court that they were not going to intervene in the proceeding.

The notice sent to the mother at her last known address was received by the County unsigned. Through an attorney we argued that the Act instructs that these types of notices must be sent by registered mail with return receipt requested and that if the location of the parent is unknown, the placing agency must follow other steps before a hearing can take place. The court informed the County that there is a big difference between certified mail and registered mail with return receipt requested and ordered the County to comply fully with the Act. The County is now sending notices required under Section 102 (A) by registered mail with return receipt requested.

There are other problems that we have experienced under Section 102 (A). Personal service is considered superior to registered mail with return receipt requested in Minnesota. This kind of service is not always superior. We have no problem with personal service as long as the person whom that notice was intended for signs off on it.

Section 105 (A) & (B) of the Act deals with an order of preference in adoptive and foster care placements. Hennepin County is doing very little to ensure that this Section is being followed. Time and time again our Indian children are being placed in White foster homes because according to the County "there are no Indian foster parents available".

We are involved in one case where a normal health Indian child has been in a White foster home for approximately 2 years. In January of this year a Hennepin County Court Judge ordered that the County place the child in an Indian foster home. The child is still in the White home. The County says that the child has been number one on the Indian foster home list since January. In our opinion, the County is not making the effort that it should to place our children in Indian homes and yet it feels comfortable in using our Indian Relief money for their foster care purposes.

Another Section in the Act that has clearly not been complied with in not only Hennepin County but in the entire State of Minnesota as well, is Section 301 (A) or 25USC 1951.

> "Sec. 301 (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show -
>
> (1) the name and tribal affiliation of the child;
> (2) the names and addresses of the biological parents;
> (3) the names and addresses of the adoptive parents; and
> (4) the identity of any agency having files or information relating to such adoptive placement."
>
> "Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended."

I would like to inform this Committee that since the Indian Child Welfare Act became law there have been only two records submitted to the Secretary or his agent from the State of Minnesota.

Judge Allen Oleisky, after investigating his responsibilities under this Section has recently informed us of his intention to comply fully with Section 301 (A).

We are aware of a case where an assistant county attorney used a tribal social worker as an expert witness in an effort to terminate parental rights, with the full knowledge that the expert witness had no knowledge of the particular case. The tribal social worker recommended termination of parental rights and the rights were terminated. The expert witness is no longer a social worker with the tribe. We are concerned that the tribes do not have enough money to do their jobs properly.

On August 8, 1983 Mr. Bob Aitken, Director of the Human Services Division for the Minnesota Chippewa Tribe wrote to me in response to concerns I was having over Section 106 (B) of the Indian Child Welfare Act. He said, "There is another point here you must deal with, and that is reality. You know the Act is terribly under-funded and misdirected by the Bureau of Indian Affairs. Most of the off-reservation notices we receive are not physically responded to by our tribe. We do not have the people to do it. This causes an attitude problem with the agencies sending us notices in that we do not attend the court proceedings anyhow! If we were able to respond more efficiently, then I would feel comfortable in insisting on a more formal notice."

We are concerned that the Minneapolis and St. Paul Indian communities, which according to the State Planning Agency have a total Indian population of 22,657, or 56.6% of the total Indian population of Minnesota, only received $64,000 in Indian Child Welfare Act funds for the 1983-84 year period. How are we to implement the Act when there are so few funds available to serve such a large population?

We are grateful to the Minneapolis Community Action Agency, an agency dedicated to helping poor people, for having enough faith in us in the form of a grant which has allowed us to continue our Monitoring program.

In closing, may I add that through the leadership of the Family Health Program of Minneapolis the Indian community in Minneapolis and St. Paul has established an effective network to deal with Indian Child Welfare Act cases. We support each other. Through the leadership of the State of Minnesota Indian Affairs Council, a state-wide network of ICWA professionals has recently been established to deal with Indian Child Welfare Act problems within this State. Together we will improve the conditions of Indian people within the State of Minnesota.

In my testimony I have given you examples of problems we have experienced in securing funding for our Indian Child Welfare Act Program. Today, I have given you a few examples of non-compliance with the Act and have shared other related concerns. I thank you for this opportunity and feel confident that you will do whatever is humanly possible to help us.

Sincerely,

Jake Mendoza

Jake Mendoza
Monitor
Indian Child Welfare Act Program
Minneapolis American Indian Center

MINNEAPOLIS
AMERICAN INDIAN CENTER
1530 East Franklin Avenue • Minneapolis, Minnesota 55404
612-871-4555

MAIC INDIAN CHILD WELFARE ACT

MONITORING PROGRAM

BOARD OF DIRECTORS
Elaine M. Stately
President
Clyde Bellecourt
Vice President
Judy Fairbanks
Treasurer
Laura Waterman Wittstock
Secretary
Rick McArthur
Chairperson, Business & Technical Advisory Council
Lee Staples
Personnel Chairperson
Charles Robertson, Sr.
Jean Strong
Juanita Espinosa Corbine
Harriett Heisler
Diana Buckanaga Percy

ADMINISTRATION
Elizabeth Hallmark
Executive Director

PROGRAMS:
Adult Education
J.T.P.A.
Chemical Dependency
Circle Newspaper
Congregate Dining
Cultural Arts
Indian Child Welfare
Recreation
Senior Citizens
Sewing Project
Welfare Advocacy
Woodland Craft Store

I. NARRATIVE OF PROGRAM AND OBJECTIVES:

The Monitoring Program began operations on October 11, 1982. The Program has been extremely successful in identifying areas of concern related to the Indian Child Welfare Act in Hennepin County. The purpose is to promote the stability of the Indian Community in Hennepin County by ensuring that the federal standards for the dispositions of Indian Child Welfare cases, as provided in the ICWA/Public Law 95-608, are followed. Major accomplishments include:

1. Our insistence that the Act be followed has lead to Hennepin County changing its procedure of sending notice required under 25 USC 1912 by registered mail with return receipt requested as opposed to certified mail.
2. Our insistence that the Act be followed promoted the Hennepin County Juvenile Court to investigate its responsibilities under 25 USC 1951(a). The Court is now complying with 25 USC 1951(a).
3. Working cooperatively with a legal organization, we developed a standarized Internal Reporting System which is now being used by all Judges and Referees in the State of Minnesota to ensure that they are in compliance with the Indian Child Welfare Act.
4. Our insistence that Hennepin County was failing in its responsibility to recruit more Licensed Indian Foster Homes, helped lead to the creation of a County Indian Foster Home Recruiter position.
5. Currently, we are working cooperatively with every Indian organization/tribe dealing with the ICWA, in an effort to pass a State of Minnesota Indian Child Welfare Act.

II. SERVICES PROVIDED:

1. Monitor ICWA cases by attending Court Hearings.
2. Referral
3. Educate the community on the Indian Child Welfare Act.

III. TOTAL NUMBER OF CLIENTS SERVED FROM JANUARY 1, 1983 TO JANUARY 31, 1984:

1. 69 ICWA cases monitored.

IV. LEVEL OF FUNDING AND ITS SOURCE:

1. Department of Interior - $40,836; 10/1/82 - 9/30/83.

2. Minneapolis Community Action Agency - $20,000; 11/1/83 - 6/30/84.

V. FUTURE GOALS:

1. To secure additional funding to continue the Program past 6/30/84.

2. To reach a point where compliance of the Indian Child Welfare Act will become routine by the County and monitoring will not be necessary.

3. To secure funding to enable MAIC to hire a full-time ICWA Counselor and also a full-time Indian Guardian Ad Litem recruiter.

Respectfully Submitted,

Jake Mendoza

Jake Mendoza,
MAIC/ICWA Recruiter

FOSTER CARE PLACEMENT
OF AMERICAN INDIAN CHILDREN
IN HENNEPIN COUNTY
APRIL 25, 1984

American Indian children are being placed in foster care at an alarming rate in this country. The Association on American Indian Affairs estimates that on a national basis 25% to 35% of American Indian children are placed in foster care for a period of time during childhood or adolescence.

The situation is similar in Hennepin County. The rate of foster placement of Indian children in the County is eleven times greater than for non-Indian children. Hennepin County Community Services staff estimated in 1980 that one in four Indian children in the County was in foster care for all or part of the year.

In 1981, Hennepin County Community Services received 357 requests from the Hennepin County Foster Care Unit and other sources for the foster placement of Indian children; 219 Indian children were actually placed. These 219 children were distributed relatively evenly across age groupings with the exception of fairly heavy placement in the 0 - 5 age category. The following table indicates the distribution:

Age Group	Foster Home	Other Types of Placement	Total
0 - 5	71	4	75
6 - 12	36	11	47
13 - 14	18	30	48
15 - 17	20	28	48
18+	1		1
	146	73	219

Source: Hennepin County Community Services

The vast majority of Indian children who are removed from their families are placed in non-Indian homes or institutions. As of December 15, 1983, 136 American Indian children from families resident in Hennepin County were in foster care or pre-adoptive placement. Only 30, or 23%, of these children were in Indian foster families. Of the 30 children placed with Indian families, 15 were in homes outside Hennepin County.

The placement of Indian children in Hennepin County is broken down by type of placement in the following table:

Indian foster homes in Hennepin County	15
Indian foster homes outside Hennepin County	15
Non-Indian foster homes	61
Pre-adoptive White homes	5
Residential group facilities*	40
	136

*There are no Indian-operated group facilities for the care of Indian children in the Twin Cities Metropolitan area.
Source: Hennepin County Community Services

COPY

NOV 17 1983

HENNEPIN
OFFICE OF THE PUBLIC DEFENDER
C2200 Government Center
Minneapolis, Minnesota 55487
(612) 348-7530

William R. Kennedy, Chief Public Defender

November 15, 1983

Mr. Russell V. Ewald
Executive Vice President
McKnight Foundation
410 Peavey Building
Minneapolis, MN 55402

Re: Application of Jake Mendoza for Indian Child Welfare Act Monitoring Program

Dear Mr. Ewald:

I understand that Mr. Mendoza has applied to your foundation for a grant to be used to continue his work at the Minneapolis American Indian Center monitoring Minnesota's compliance with the United States Indian Child Welfare Act of 1978. He has informed me that his application has been denied, in large part because McKnight feels that the services he provides are already the province of other private and public agencies.

In May of this year, this office began a special group of people who concern themselves with Hennepin County Child Protection cases which fall under the Indian Child Welfare Act. In my activity with this group, I have found that there is a wide gulf between what the United States Congress directed the states to do five years ago, and what they are actually doing. I have concluded that the situation here is so bad that it appears possible that offensive litigation to seek compliance may be necessary because of what can, at best, be called negligence on the part of the welfare authorities in this state.

Mr. Mendoza's program was originally funded by the Bureau of Indian Affairs. That agency has decided not to renew his program. I firmly believe that the Bureau's action is retaliatory, and further, that this vital function will not be performed by anyone else in the Bureau or elsewhere. In performing his duties, Mr. Mendoza very early found that the Bureau has totally neglected its responsibilities for record keeping and compliance monitoring. Without initiating unhelpful polemical discussion on the issue, I think it is worth noting that the Interior Department, of which the Bureau of Indian Affairs is a part, rather strenuously opposed passage of the Indian Child Welfare Act in 1977 and 1978. Mr. Mendoza has attempted to obtain the Bureau's cooperation in performing these functions, but, to my knowledge, has received little.

I understand that your foundation believes that Mr. Mendoza's services are already provided by some or all of the following agencies: the Red Lake reservation's social worker at the Upper Midwest American Indian Center, Ms. Mary White; the social worker to be hired by the Minnesota Chippewa Tribe, and who will work at the Minneapolis American Indian Center; the Hennepin County Attorney, the Hennepin County Bureau of Social Services, and my office. I think it is essential to point out that each of these agencies are involved with the Indian Child Welfare Act on behalf of specific clients. For instance, Ms. White represents only Red Lake reservation matters, and takes her instructions from the tribal court there; the Minnesota Chippewa Tribe's new worker will act similarly under instruction from the Tribal Executive Committee, and perhaps the individual reservations' business committees. The same is true of Mr. Bob Aitkin, who is the social services director of the Minnesota Chippewa Tribe - in addition, he is about four hours' driving time away, and rarely attends court hearings here. With regard to the County Attorney and the Bureau of Social Services, there is in both offices a total of one Indian who does not have particular responsibility for Indian cases. My personal feeling is that neither of these two agencies has made any good faith effort to follow the Act, and probably will not unless forced to by court decision. Lastly, with very few exceptions, my office must be appointed by the Court to represent Indian parents, and we generally can provide little assistance to parents whose cases have not come to court, or who have not been made aware of the proceedings, or the large number of parents whose cases have been concluded against them by default.

Perhaps if I could spell out a few of the instances Mr. Mendoza has provided valuable assistance which could not have been provided otherwise, my point would be clearer. 1) Not long ago, an Indian mother did not appear for trial of a termination of parental rights matter. Her lawyer was permitted to withdraw from the case. The Court then permitted the County Attorney to proceed on default, but in doing so, allowed the County to offer the testimony of an Indian social worker from the Leech Lake reservation who had never met or otherwise dealt with, the family.. This is a clear violation of the Act, one which would form the basis of a court proceeding to cancel the default, and a proceeding which would likely not have come to my attention were it not for Mr. Mendoza. 2) The County Attorney repeatedly uses certified mail to last-known-addresses to serve Indian parents, and then, when no response is made, publishes notice in legal newspapers. Neither of these procedures is permitted by the Act. He was able to convince the County Attorney, on behalf of the community and a few parents who had not been notified, to follow the Act and use registered mail. None of us have, as yet, been successful in stopping the use of publication, which is also not permitted by the Act. 3) He is attempting, at my request, to locate in the community three parents whose cases I know about but have not been appointed to represent, who are either in danger of default or who have been defaulted, and whose cases could be reopened because of defects in the County's compliance with the Act. 4) He has called attention to the widespread practice here of transferring children between foster placements without notice to the tribes, the parents, and in many cases, the lawyers. This also is prohibited by the Act. 5) He has helped to convene a legislative committee to study areas of the Act which should be amended and considered by both the federal and state legislatures.

Mr. Mendoza fills in the gaps. His services are most valuable to me, my clients, and those parents in the community who do not have legal representation. I will miss the services he provides if he is not able to continue his work. I do hope you will reconsider your decision if it was based upon misinformation.

Thank you for considering my comments.

Sincerely,

Peter W. Gorman
Assistant Public Defender

PWG: cah

family
& childrens
service

November 15, 1983

NOV 21 1983

Russell V. Ewald
Executive Vice President
McKnight Foundation
Suite 140 Peavey Building
Minneapolis, MN 55402

Dear Mr. Ewald:

I am writing to request your reconsideration of the funding request by the Minneapolis American Indian Center for its Indian Child Welfare Act (ICWA) monitoring program. As director, of the Family Advocacy Program at Family and Children's Service, I have had the opportunity to work closely with the ICWA monitor and others in the Indian community in efforts to identify and resolve some of the systemic problems in child welfare proceedings involving Indian children. In addition, our program has been involved on an individual case basis in representing Indian children through our participation in Hennepin County's guardian ad litem program. In both of these efforts we have found the court monitor to be an invaluable and unique resource.

The great concern of the Indian community for the future of their children and the extent of problems they have faced in child welfare proceedings have led to the establishment of several programs to protect Indian children. The court monitoring program is distinct from these in several respects. For example:

1) It monitors all child welfare proceedings involving Indian children. In some of these cases there are no Indian community workers or guardian ad litems. Tribes are able to be involved only if the child is an enrolled member or eligible for enrollment. Many Indian children are not. In addition, even when the child is enrolled or eligible, tribes, especially non-Minnesota based tribes are not always physically and financially able to be involved. In some cases the court monitor may be the only Indian representative in the case. In other cases the monitor is the first Indian representative to be involved. He then brings in other appropriate parties.

414 South Eighth Street • Minneapolis, Minn. 55404 • Telephone 340-7444

November 15, 1983

Russell V. Ewald
Executive Vice President

Page II

2) Even when other members of the Indian community are involved, the court monitor plays a unique role. In addition to intervening when the ICWA is not followed, he is a resource person for almost all of the other participants because of his expert knowledge of the act.

3) The court monitoring program provides the kind of thorough and consistent documentation of failures to follow the ICWA which is a necessary first step toward future efforts to improve the way Indian children and families are served. This monitoring has helped to establish to what extent problems encountered by the Indian community and failures to follow the ICWA are occasional aberrations and to what extent they are systemic and in need of additional remedies. This kind of documentation is much more effective in producing changes in policy and proceedures than scattered anecdotal evidence.

The primary thrust of the 1983-84 program objectives of the court monitoring program is toward achieving these kinds of policy and procedural changes. This is the logical progression and significant contribution of the monitoring program.

In conclusion, the monitoring program is unique, invaluable and highly effective. I hope you will be able to support it for the forthcoming year.

Please feel free to call with any questions.

Sincerely,

Louise Brown
Family Advocacy Director

LB/cjd

NOV 21 1983

Karen Clark
District 60A
Hennepin County
Committees:
Governmental Operations, Vice-Chair.
Job Creation and Unemployment
Subcommittee, Chair.
Health and Welfare
Local and Urban Affairs

Minnesota
House of
Representatives

Harry A. Sieben, Jr., Speaker

November 17, 1983

Mr. Russell V. Ewald
Executive Vice President
The McKnight Foundation
410 Peavey Building
Minneapolis, MN 55402

Dear Mr. Ewald:

I would like to strongly urge that you reconsider your decision to deny the Minneapolis American Indian Center's request for a $20,000 grant to continue its Indian Child Welfare Monitoring Program.

I understand there are three major concerns you have with granting funding.

1. The MAIC monitoring program has another source for funding.

My understanding is that the $20,000 publicly funded grant from Minneapolis Community Action Agency will cover only 50 percent of the costs and was granted with the expectation that matching funds would be forthcoming from the private sector. The MAIC program simply must have full funding in order to continue its unique and excellent record of service. The MCAA grant alone will not cover the salary or fringe benefits, let alone other program costs.

2. Other agencies employ American Indian advocates to assist social service clients and monitor court cases.

I can certainly understand that there could be some confusion about the unique role that the MAIC monitoring program provides. It's true there are several other excellent agencies and programs serving American Indian child welfare clients in Minneapolis. However, as I have become familiar with the various Indian services in the area, I've learned that there are important distinctions to be made in the type and scope of services offered by each. I hope I can help to clarify that for you very briefly here.

The Hennepin County Indian Advocates specifically fill the role of advocating for particular parties in Indian Child Welfare cases, plus have many other Hennepin County responsibilities for the full range of American Indian client's needs. The same is true of other community organizations involved in Indian child welfare work - e.g. Lutheran Deaconess Family Health, Upper Midwest Indian Center. The unique role that the MAIC program fulfills is to objectively monitor the county's compliance with the Act. They do not take an advocacy role on behalf of any particular party as a

Reply to: ☐ 255 State Office Building, St. Paul, Minnesota 55155 Office: (612) 296-0294
☐ 2918 Columbus Ave. S., Minneapolis, Minnesota 55407 Home: (612) 822-2526

matter of course. This is of particular importance in ensuring that the child's best interest is served. Additionally the MAIC monitoring program is the only program solely and comprehensively devoted to its monitoring mission. It does a comprehensive service of monitoring - a scope to which other agencies simply aren't able to devote similar time and resources.

As you may be aware, I and Senator Linda Berglin have been working with a coalition of American Indian groups throughout the state who are very concerned about lack of proper enforcement of the Indian Child Welfare Act. We will be considering state legislation to improve enforcement measures. Much of the information and assistance we've needed has been forthcoming from the extensive monitoring, testifying, and record-keeping activities of Mr. Mendoza at the MAIC program. His is a unique and important role not specifically filled by other agencies.

3. The Minnesota Chippewa Tribe will be overseeing the Indian Child Welfare Act in a new office at the Minneapolis Indian Health Board.

It is my understanding that the Minnesota Chippewa Tribe is not duplicating the unique role of the MAIC monitoring program. Their specific function is to advocate for and represent the Minnesota Chippewa Tribe's interest in Indian Child Welfare Act cases. Again, this is a particular advocacy - a very crucial one, but also very specifically focused on one tribe's interest in such cases. As you might guess we have many Indian children from various tribes needing advocacy in Minnesota.

I hope this elaboration of program distinctions is helpful to you and will cause you to reconsider funding the MAIC monitoring program. It is my strong feeling that until such time as we may have an independent Indian Child Welfare program in Minnesota, we need to assure that all Indian families and their children who are involved in child welfare act cases are served with the most comprehensive resources we can muster. The severity of recently documented statistics showing failure of the system to monitor itself causes me to stress the urgency your decision prompts.

Please feel free to contact me personally for further discussion in this matter.

Yours very truly,

Karen Clark
State Representative

cc: Jake Mendoza
Minneapolis American Indian Center

UPPER SIOUX COMMUNITY
BOARD OF TRUSTEES
P. O. BOX 147
GRANITE FALLS, MINNESOTA 56241
PHONE 612 564-4504
OR 4026
PEJUHUTA ZIZI OYATE

Donald Robertson
American Indian Child Welfare Counselor
Upper Sioux Community
Box 147
Granite Falls, Minnesota 56241

McNight Foundation
Russel V. Ewald
Executive Vice-President
410 Peavey Building
Minneapolis, Minnesota 55402

Dear Mr. Ewald:

I have been in contact with Mr. Jake Mendoza from the American Indian in Minneapolis. He informed me of your concern about the duplication of services his program might be doing in conjuction with other Indian organizations in the Minneapolis area. The program at the Minneapolis American Indian Center does not compete or duplicate counseling, advocate, or other services performed by Upper Midwest, Department of Indian Works, or others. What the program does is monitor various agencies in the metro area to insure that The Act is being followed.

When confronted by the unfortunate break-up of families from Upper Sioux who are residing in the Minneapolis area, it is comforting to know that the program at the Indian Center is closely monitoring agencies involved so that we become aware of the situation. I feel that they are providing a unique service and any assistance to help them maintain would be appreciated.

Thank you for your attention.

Sincerely,

Don Robertson

Don Robertson

St. Paul American Indian Center
506 KENNY ROAD
ST. PAUL, MINNESOTA 55101
612/776-8592

NOV 22 1983

November 17, 1983

Mr. Russell V. Ewald
Executive Vice President
The McKnight Foundation
410 Peavey Building
Minneapolis, MN 55402

Dear Mr. Ewald,

I am writing this letter in support of the Minneapolis American Indian Center's Indian Child Welfare Act Program. I understand that the McKnight Foundation recently denied a request from the Indian Center for that program.

There is a strong need for a program such as the Indian Child Welfare Act Monitoring Program in Hennepin County. The Program has been very effective in bringing attention to the many instances of non-compliance with the Indian Child Welfare Act occuring in the county. It has also resulted in the several important changes in county practices regarding the Act. More programs of its type are needed in many other States and Counties across the nation.

I fully endorse the Minneapolis Indian Center's Indian Child Welfare Act Monitoring Program and would recommend that it be funded.

Sincerely,

Tom B.K. Goldtooth
Executive Director
St. Paul Indian Center

fe:TBKG

cc: Jake Mendoza

tors
Chairperson
Services
Program
n Referral
ster Care Advocacy
information
nent Referral
Home Ownership
nd Training
Referral
Department
Newsletter
Welfare Act
Indian Foster Homes
ited Way Agency

PRESIDENT
Bernard Becker

VICE PRESIDENTS
Laura Cooper
Michael Sullivan

TREASURER
Felino de la Pena

EXECUTIVE DIRECTOR
Jeremy Lane

AGENCY ADMINISTRATOR
Roger C. Cobb

LAW OFFICES
of the
LEGAL AID SOCIETY OF MINNEAPOLIS, INC.

SOUTHSIDE OFFICE
2929 FOURTH AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55408
(612) 827-3774

MANAGING ATTORNEY
Randall Smith

ATTORNEYS
Valerie J. Bogart
Ann T. Laughlin
James E. Wilkinson

LEGAL ASSISTANTS
Joanne L. Byrd
Marny E. Corbin
Marlys A. Wilson

NOV [illegible] 1983

November 21, 1983

Russell V. Ewald
Executive Vice President
The McKnight Foundation
410 Peavey Building
Minneapolis, MN. 55402

Dear Mr. Ewald:

The Minneapolis American Indian Center has requested that I comment on your letter of November 7, 1983, to Ms. Elizabeth Hallmark, Executive Director at the Center. Specifically, while there are other agencies with American Indian advocates who work with Indian clients on Indian Child Welfare Act cases, those agencies are not able to effectively work with all such clients because of the large numbers and intensity of most of these cases. In addition, the client-oriented approach does not always allow such advocates to push strongly for the fullest implementation of the Indian Child Welfare Act. The work of oversight and particular emphasis on implementation of the Act is one which is solely being worked on by the Minneapolis American Center program.

Thank you for your consideration. Please do not hesitate to contact me if you have further questions.

Sincerely,

JUVENILE PROJECT OF THE
LEGAL AID SOCIETY

James E. Wilkinson

James E. Wilkinson
Attorney at Law

JEW:feb

United Way
Agency

LINDA BERGLIN
Senator 60th District
323 State Capitol Building
St. Paul, Minnesota 55155
Phone: 296-4261
and
2309 Clinton Avenue South
Minneapolis, Minnesota 55404

Senate
State of Minnesota

November 18, 1983

Russell V. Ewald, Exec. V.P.
McKnight Foundation
410 Peavey Building
Minneapolis, Minn. 55402

Dear Mr. Ewald:

I am writing to express my support for your re-consideration of the grant application for the Indian Child Welfare Act Monitoring Program.

I would ask that you consider the arguments that the program's operator is proposing in the grant proposal. Mr. Mendoza does not feel that the reasons given for denying the grant request were factual and applicable to his program's objectives and past successes.

Thank you for considering my request to review the recent grant application of the Indian Child Welfare Act Monitoring Program. Please feel free to contact me if you want me to elaborate on any point.

Sincerely,

Linda Berglin

Linda Berglin
State Senator

LB:11
cc: Jake Mendoza ✓

COMMITTEES • Chairman, Health and Human Services • Taxes • Government Operations • Council on the Economic Status of Women • Council on Black Minnesotans

NOV 30 1983

Legal Rights Center, Inc.
808 E. Franklin Avenue Minneapolis, Minnesota 55404
(612) 871-4886

Attorneys
Douglas Hall
Executive Director
William Gatton
Gail M. Kaba
William E. McGee
Jerod H. Peterson

Community Workers
Manuel Guzman
Jettie Ann Hill
Jerry S. Patterson
June Redday
Rodolfo Diaz
Trudell Star

Administrator
Ralph L. Crowder

Secretary
Carole Tenbear

Receptionist
Valerie Lambkins

Directors
Antonio Arellano
Clyde Bellecourt
David Bennett
Irene Bethke
Kevin Burke
Earl Craig
Syl Davis
Felino de la Pena
Frances Fairbanks
Sidney Feinberg
Jose Gaitan
Peter Heegaard
Vikki Howard
William Koenen
Alberto O. Miera, Jr.
Harry Moss
David Nasby
Carolyn Naylor
Norman Newhall
Ramon Rocha
Artley Skenadore
Sandra Vargas
Izear Watkins
Irving Weiser
Ed West

November 29, 1983

Mr. Russell V. Ewald
Executive Vice President
The McKnight Foundation
410 Peavey Building
Minneapolis, Minnesota 55402

Dear Mr. Ewald:

The Minneapolis American Indian Center has forwarded to me a copy of your letter dated November 7, 1983, to Elizabeth Hallmark, in which the McKnight Foundation declined a request to help fund the Center's Indian Child Welfare Act Monitor program, File Number 83-351.

I have been legal advisor for the Minneapolis American Indian Center's program this past year and I am also familiar with the services currently being provided by other Indian family programs by virtue of my work with all of the Indian Child Welfare Act advocates in the state.

I believe from your letter that the information you have concerning existing programs is incorrect insofar as it has led you to determine that the work proposed by the Indian Center has already been undertaken by these programs. The work being done by programs other than that of the Indian Center has been all client-specific. The work of Jake Mendoza, the Center's current monitor, has been to make certain that the Act is followed in all applicable cases. In a very real sense, his only client is the Act. This difference in job description has a profound effect on what work gets done.

First, the advocates who are doing client-specific work, like all persons who deliver services to the poor, are so busy doing their individual cases that they are unable to take the time that Jake Mendoza has taken to attempt to effect system-wide changes in the manner in which Indian children are treated in Hennepin County. Until Jake began his work, the meetings I attended of Indian Child Welfare Act advocates were characterized by a repetitious description of the problems the advocates were facing. The solutions to these problems often appeared to be simple but out of reach organizationally by people whose time was already consumed by clients' individual cases. Jake has been able to have the effect he has had in Hennepin County largely because of the fact that his job description enabled him to spend time with county attorneys, public defenders, social service providers and judges that the client-specific advocates could not afford.

Second, the advocates who are doing client-specific work often learn that the interests of their particular clients do not coincide with application of the Indian Child Welfare Act. In such situations, the advocates have an ethical obligation not to remind the court of the existence of the Act, since use of the Act would weaken their clients' positions. The problem with this ethical obligation is that it has the systemic effect of reinforcing ignorance of the Act in the minds of court personnel. The presence of Jake Mendoza as a neutral proponent of use of the Act is precisely what is needed to ensure not only that the Act be used in a specific case but that it also become a part of the court system's consciousness.

When I spoke to McKnight's representative, Ms. Latimer, about my assessment of the Indian Center's program, the issue of duplication of services did not come up. If you think it would be helpful, I would be happy to talk to her once again about the importance of the Center's program in the context of existing programs.

Yours very truly,

Jerod H Peterson

Jerod H. Peterson

cc: Jake Mendoza
Courts Monitor

STATE OF MINNESOTA
DISTRICT COURT OF MINNESOTA
FOURTH JUDICIAL DISTRICT

CHAMBERS OF
JUDGE ALLEN OLEISKY
328 COURT HOUSE
MINNEAPOLIS, MINN. 55415

April 23, 1984

TO WHOM IT MAY CONCERN:

The writer is the presiding Judge of the Hennepin County District-Juvenile Division in Minneapolis. The population of our jurisdiction is approximately one million people. Our Court hears cases where the Indian Child Welfare Act is applicable.

Approximately twenty-five percent of our dependency/neglect cases involve Indian families. Jake Mendoza of the Minneapolis American Indian Community Cent is a monitor of the Indian Child Welfare Act.

I found Mr. Mendoza to be extremely knowledgeable of the technicalities of the Act. He attends hearings on a regular basis and has offered suggestions to the Court when he feels the Act is not being complied with.

As a result of his diligence, I believe our Court has improved its compliance with the requirements of the Act.

Very truly yours,

Allen Oleisky

Allen Oleisky
Judge of District Court
Juvenile Court Division

AO:jks

Mr. **ALEXANDER**. Our next witness is Elmira McClure.

STATEMENT OF ELMIRA McCLURE, DIRECTOR, POTAWATOMI INDIAN CHILD WELFARE PROGRAM, SAINT AUGUSTINE'S CENTER, CHICAGO, IL

Ms. **McCLURE**. I would like to begin by thanking the Members of Congress for being at odds with the Bureau of Indian Affairs and restoring the funds for our reservation programs. You have our written statement, and I am terrified——

Mr. **ALEXANDER**. We have not bitten anybody yet, other than Federal officials.

Ms. **McCLURE**. Outside of my comments, you can read about all the good work. Your money has been well-spent, in Chicago at least, and I would like to see us able to continue that work. Just keep our programs going. And I would like to be excused, because I do not even think I could answer any questions at this point.

Mr. **ALEXANDER**. Thank you for coming. If you do this 20 or 30 times, it gets easier. It really does.

Ms. **McCLURE**. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF ELMIRA McCLURE, DIRECTOR, POTAWATOMI INDIAN CHILD WELFARE PROGRAM, ST. AUGUSTINE'S CENTER, CHICAGO, IL

For over two decades, St. Augustine's Center for American Indians has provided a wide array of social services to the American Indian population of Chicago. The multi-service agency is not only Indian owned but maintained by a predominantly Indian staff as well. From the early years of origin to the current moment in time, the Center has implemented an intensive casework program culturally relevant to the needs of the client population.

Illinois is one of the few states that has no reservations, yet some estimated 18,000 Indians live in or nearby Chicago. We have several Indian communities scattered throughout Illinois. We represent some 70 different tribes across the United States.

Current census reports indicate the population count for Native Americans to be approximately 8,700 within the city of Chicago. Census accuracy has been hindered by poor statistical reporting techniques and the migrating pattern of Indian people. Families frequently migrate to and from reservations. Data from local Indian organizations depicts a larger count than that of the census bureau.

Indian migration to Chicago became evident in the early 1950's. Migration occurred primarily as a result of the Federal Relocation Act. Since then, there has been a steady rise in the number count for Indian people residing in Chicago. Chicago is the home base for second and third generations of Indian people. Unlike the reservations, we have no tribal government for leadership and services but must rely on Indian organizations.

Over the years, St. Augustine's has accumulated a vast amount of knowledge about the cultural and socio-economic needs of the Indian people. Efforts were always taken to utilize this knowledge in a most productive manner. Work experience indicated that Indian people did not utilize other available social service agencies. Because of the client population's need for multi-culturally relevant services, St. Augustine's became a vital social resource. Servicing the Indian people of Chicago has always been a foremost goal for the agency. The delivery of quality effective social services continues to be a guiding theme.

Few, if any agencies, are equipped to handle the wide range of problems experienced by the urban American Indian families. High unemployment, high costs of medical care, inadequate housing, inappropriate educational facilities, and unavailable legal aid resources, further add to the survival plight of the family. Because of the nature and vast array of needs and because of a lack of agencies specifically designed to service such needs, St. Augustine's has developed a multi-purpose, comprehensive, social service program in order to provide an ongoing support system for American Indians in Chicago. Supportive services have been specifically designed to accommodate the needs of the service population. Treatment and service planning are at all times culturally relevant to Indian families.

Through our ability to deal with the family in a holistic manner, we hope to alleviate some of the stress and strain under which urban American Indians live. It is our contention that the culturally relevant method of service delivery will lead to a self-help program which will promote self-sufficiency among the American Indian population in Chicago. The key to the success of such an effort is the ability to preserve, strengthen, and shore up in every possible way the structure of the American Indian family. The preservation of the family is vital and crucial to traditional values and expressions of the American Indian culture.

While there are several agencies which offer partial children and family services in the target area (i.e. American Indian Center, Native American Committee, Edgewater-Uptown Mental Health, Salvation Army, North Area Office of the Illinois Department of Children & Family Services), the only other agency which provides a full and comprehensive range of services is St. Augustine's Center for American Indians.

The accessibility of American Indian families to service provided by agencies other than St. Augustine's is severely limited by several factors. (1) The geographical location of some agencies. (2) Social Service agencies within the Uptown area have an extreme case overload. Client waiting lists are long and deterring. (3) The highly structured atmosphere of non-Indian agencies tends to have a negative effect upon Indian people. (4) Last, is reference to the Indian Child Welfare Act, our accumulated agency knowledge indicates that Chicago agencies are not thoroughly informed about the technicalities of the Act. Currently, St. Augustine's is the only agency that has, so far, provided services to Indian families and other agencies that directly aid in the implementation of the Act.

Our agency is recognized and referred to as a primary Indian Child Welfare Agency by the Indian community of Chicago, the Department of Children and Family Services, and the Cook County Juvenile Court. The Cook County Juvenile Court has assigned a special liaison person for all Indian Child Welfare cases. The state of Illinois is currently processing a written statement of recognition for St. Augustine's Indian Child Welfare Program. The Chicago American Indian Community Organization (CAICIC) Conference of 1981, 1982 and 1983 gave recognition to St. Augustine's and proclaimed Indian Child Welfare a community need. In the process of serving Indian children, St. Augustine's has developed working networks with 13 different tribes.

The Chicago Indian Child Welfare Program is supported by two tribal resolutions; from the Wisconsin Winnebago and Oneida tribes, which designates our program to officiate as advocates for their tribes. Evidence clearly indicates a need for a supportive children and family services program for the American Indian population of Chicago, Cultural, social and economic barriers impact upon the Chicago Indian family's ability to utilize existing social service programs. The nature and extent of the Indian population's needs further limit accessibility to other agencies. To date, there is no other agency that specializes in: (1) the delivery of direct services to Indian people, (2) the diagnosis and treatment of Indian Children and family members, (3) the implementation of the Indian Child Welfare Act. Our knowledge of the community and the needs of our clients illustrates that the proposed Indian Children and Family Services need will in no way duplicate existing services. Our intent is to make readily available those services necessary to maintain family structure.

Our staff has both the technical knowledge and experience necessary to work with Indian people. The application of psychodynamic principles and our knowledge of child development as well as our knowledge of tribal and urban cultures enables us to diagnose and treat dysfunctional children and their families.

In keeping with the intent of the Child Welfare Act, our goals are: (1) to strengthen relationships between Indian children and their nuclear or foster families, so that all family members can understand, survive, and absorb the impact of inflicting values. All efforts will be taken to prevent the unwarranted breakup of Indian families and to promote the stability of the home unit. (2) Indian parents will be fully informed of their rights as provided under the Indian Child Welfare Act. (3) to educate the public about the importance of the extended family, in particular how the extended family influences child rearing practice in Chicago Indian homes. Our knowledge of the importance of the extended family to Indian people is consistently assimilated in our service policy and treatment approach. (4) to identify and recruit extended family members as secondary caretakers for Indian children, (5) We will recruit, identify and monitor all secondary homes found for our Chicago Indian youth in accordance with;

1. The directives of PL 95-608 (Indian Child Welfare Act of 1978).

2. The provisions of the Children & Family Services Regulations. No. 5.12 of the Illinois Department of Children & Family Services.

The state of Illinois has honored St. Augustine's recommendations for resource homes for Indian children with the following provisions:

1. that the child's tribe approve, specify, or recommend the resource home.
2. that home comply with standards set by the Department of Children & Family Services and that no state license be required for these homes.

(6) Home visits will be made on a monthly basis as a follow-up method for monitoring placements. The provisions of a stable, supportive, nurturing, environment is a foremost goal. (7) To develop a strong communication network with all state, county, and city child welfare agencies. It is our contention that fair and effective Indian Child Welfare Policy will result as a consequence of strong communication networks and guarantees the full implementation of the Indian Child Welfare Act. (8) Group therapy is made available to specific population of our clients. Group therapy is predominant in many of our service plans. Two support groups are in existence. A women's rehabilitative group is available to women who have children in placement. Group dynamics focuses on the improvement of child care and homemaker practices. The process of this group is based on a self-help model is geared for parents who have had children removed from their homes. The second group is a support group for foster or emergency parents. The emotional strain of being a surrogate parent is often an overwhelming experience. The need for support is crucial for these parents. Group dynamics focuses on the ventilation of emotions and the sharing of similar experiences with others. (9) for a small group of children experiencing dsyfunctional behavior and lacking adequate family support system, we offer an after school program. Children are selected from families already active with our social service program. The after school component operates five days a week from 2:30-4:00 PM. A summer day care program is also instituted as a continuing effort to service children. This program is held five days a week from 10:30-4:00 PM. The overall goal of the after school/summer day care program is to improve the child's current social functioning and environment adaptation, and promote cultural awareness. (10) Court monitoring is assurance that the intent of the act is followed. At the present, none of these specialized service programs is being offered by other agencies.

Mr. ALEXANDER. Do we have a representative from the Penobscot Indian Nation, from Indian Island, ME?

STATEMENT OF JAMES SAPPIER, REPRESENTING THE GOVERNOR AND TRIBAL COUNCIL, PENOBSCOT INDIAN NATION, INDIAN ISLAND—OLD TOWN, ME; ACCOMPANIED BY JEANNE ALMENAS, DEPUTY DIRECTOR OF HUMAN SERVICES, PENOBSCOT INDIAN NATION; AND JOHN SILVERNAIL, FAMILY SERVICE SPECIALIST, CENTRAL MAINE INDIAN ASSOCIATION

Mr. SAPPIER. I am Jim Sappier, representing the Penobscot Nation here today, as well as the New England Indian Task Force for the six States of New England.

We have 40 Indian tribes and organizations in New England. There are 21,000 Indians in New England; 8,000 families; and 3,200 people under 19 years old. In Maine, 1.4 percent of the population is Indian. Ironically, of the total 207 juveniles incarcerated, 73 are Penobscots or Passamaquoddies. That is, 36.2 percent of the total juvenile population incarcerated are members of our tribes. Something has to be done, and the way to do it is with the Indian Child Welfare Act.

With me today is Jeanne Almenas, deputy director of human services for the Penobscot Nation, and John Silvernail, family service specialist for the Central Maine Indian Association. We would like to share with you what the Indian Child Welfare Act has enabled us to do in the legal setting which exists in Maine. So I believe we have, in many respects, a success story to tell. On the other hand, we need to specify problems we have encountered in implementing the act which should be remedied by administrative and/or legislative action.

In the spring of 1980, before the Maine Indian Settlement Act took final form and was ratified, the Penobscot Nation became the first Maine tribe to establish a fully-functional tribal court and to charge that court to take jurisdiction in child custody cases as authorized by the Indian Child Welfare Act. Within a month, a meeting was held between personnel of the tribal government and representatives of the Maine Department of Human Services to deal with immediate practical issues, since at that time relationships with the State have progressed from ad hoc case-by-case arrangements to formal written agreements. At the present time, there is an agreement, considered a draft but followed in practice, governing responsibility for the receipt of referrals, investigations, and the determination of tribal affiliation, and the delivery of services to children and families who may fall under the jurisdiction of the ICWA.

Whenever a child may be at risk of abuse and neglect, and jurisdiction is uncertain, the agreement authorizes either party to take prompt action, if necessary, and notify the other. The issue of jurisdiction is to be resolved as soon as possible, but it is not to take precedence over the well-being of a child.

I would like to pass this on to Jeanne Almenas.

Ms. ALMENAS. The Central Maine Indian Association, which is an off-reservation Indian agency, dealing with off-reservation Indians regardless of their tribal affiliation, has been a full-time partner with us in the Maine Indian Family Support Consortium since the first time of our successful grant application under the Indian Child Welfare Act in 1981.

We believe that the intent of the act is to protect the tribal and family identity of every Native American, and we strive together to extend the effect of that act to any within the State of Maine who seek to get its protection. The Central Maine Indian Association, although it does not have legal jurisdiction, is able to call on a decade of experience in advocacy on behalf of those Indians who have no choice but to cope with the State system.

The Maine Department of Human Services has signed an agreement establishing procedural guidelines and mutual consultation with the Central Maine Indian Association.

At this time, I would also like to say that there are a lot of written agreements between Penobscot Nation and the Maine Department of Human Services. In fiscal year 1984, our grant application for the Indian Child Welfare Act grant was disapproved, and one of the things we were cited for was that a lot of our time seemed to be spent in agreements with the State. We feel that because of the recent unique land claims settlement with Penobscot Nation, it requires a continuing and carefully-constructed set of agreements with public and private agencies and the State of Maine in order to create a properly-functioning system of Indian child welfare, controlled by the Indians.

Mr. ALEXANDER. Is that in writing?

Ms. ALMENAS. Yes. Right now, some of them are draft agreements. They have not been finalized.

Mr. **Alexander**. No, the rejection of your application on the basis of cooperating with the State of Maine?

Ms. **Almenas**. Yes, it is. It is in our appeal.

Mr. **Alexander**. May we have that for the record, please?

Ms. **Almenas**. Yes, we will give you a copy.

Although there are some outstanding issues, right now we have a real good and positive, stable relationship with the State of Maine.

The main goal of the Penobscot Child and Family Services Program is to prevent the disruption and/or separation of Indian families. The program has a variety of direct support services available to these families in need, and some of these are day care, parent discussion groups, individual counseling, family counseling, voluntary care, advocacy information referral, and a fingerprinting identification program. The fingerprinting identification program we also had in our appeal because we felt that it was unique to the tribes to have this fingerprinting identification, in that an annual fingerprinting identifications session reflects increasing concern in our society over the incidents of abduction and the disappearance of Indian children, and it is widely endorsed to aid in helping to solve these crimes.

During the past fiscal year, a total of 282 individuals have received services through our program. One of the most frequently requested services is voluntary care. Voluntary care is utilized when a parent is absent from the home for a short period of time. This year alone, there have been a total of 16 children in voluntary care. Out of the 16, 6 of these children have been placed in care on more than one occasion. These include a mother who underwent two triple-bypass heart operations within a 3-month period. Also, another mother was completing an alcohol rehab program but was unable to emotionally fill the needs and demands of her young children.

Mr. **Alexander**. Thank you very much. I am going to have to cut you off, although it is not my preference, because of our time constraints. If there are any supplements to your written statement that you would like to have included in the record, the record will be kept open for 30 days.

Mr. **Sappier**. I would like to add one more thing. Our tribal court has full faith and credit under Public Law 96-420, and we have been involved with the States of California, Pennsylvania, Massachusetts, Virginia, Connecticut, and New Mexico.

Mr. **Alexander**. Fine. We appreciate that. It is important to know.

[The prepared statement and pertinent material follow. Testimony resumes on p. 258.]

PREPARED STATEMENT OF JAMES SAPPIER, DIRECTOR, DEPARTMENT OF TRUST SERVICES, PENOBSCOT NATION OF MAINE

Mr. Chairman and Members of the Committee:

My name is James Sappier. I am Director of the Department of Trust Services Penobscot Nation, of Maine, and also serve as the elected Tribal Representative to the Maine Legislature. With me today are Jeanne Almenas, Deputy Director for Human Services of the Penboscot Department of Health and Human Services, and John Silvernail, Family Service Specialist with the Central Maine Indian Association.

We would like to share with you what the Indian Child Welfare Act has enabled us to do in the unique legal setting which exists in Maine: for I believe we have in major respects a success story to tell. And on the other hand, we need to specify problems we have encountered in implementing the Act, which should be remedied by administrative and/or legislative action.

In the Spring of 1980, before the Maine Indian Settlement Act took final form and was ratified, the Penobscot Nation became the first Maine tribe to establish a fully functional tribal court, and to charge that court to take jurisdiction in child custody cases as authorized by the Indian Child Welfare Act. Within a month, a meeting was held between personnel of the tribal government and representatives of the Maine Department of Human Services to deal with immediate practical issues. Since that time relationships with the State have progressed from ad hoc case-by-case arrangements to formal written agreements.

At the present time there is an agreement, considered a draft but followed in practice, governing responsibility for the receipt of referrals, investigation and determination of tribal affiliation, and delivery of services to children and families who may fall under the jurisdiction of the Indian Child Welfare Act. Whenver a child may be at risk of abuse or neglect, and jurisdiction is uncertain, the agreement authorizes either party to take prompt action if necessary and notify the other. The issue of jurisdiction is to be resolved as soon as possible, but is not to take precedence over the well-being of a child.

The Central Maine Indian Association has been our full-time partner in the Maine Indian Family support consortium since the time of our first successful application for a grant under the Indian Child Welfare Act, in 1981. We believe that the intent of the Act was to protect the tribal and family identity of every Native American, and we strive together to extend the effect of the Act to any within the state of Maine who seek its protection. The Central Maine Indian Association, although it does not have legal jurisdiction, is able to call on a decade of experience in advocacy on behalf of those Indians who must cope with the state system and have no choice. The Maine Department of Human Services has signed an agreement establishing procedural guidelines and mutual consultation with the Central Maine Indian Association.

Thus despite a history of more than two hundred years of neglect as wards of the state, and of heightened tensions generated by the almost decade-long land claims controversy, we have since 1980 achieved a generally stable, positive relationship with the state, on behalf of Indian children and families. In large measure our success in achieving a working relationship with the state is attributable directly to the legal authority and the service development resources provided by the Indian Child Welfare Act. In part, too, I believe the long-term relationship with the state of Maine, however unhappy its history, became a positive factor once the parties became legal equals within their respective jurisdictions.

A large measure of credit must also go to administrative and direct service staff of the Maine Department of Human Services. I will not pretend that there are no outstanding issues, or that every client has been well served, but there has been a consistent policy to consider first the needs of Indian children and families, and so far as possible to minimize procedural and bureaucratic obstacles. A special word of recognition is due to Nancy Goddard, Substitute Care Program Specialist, who in the early days was appointed liaison between the Department of Human Services and the tribal programs; and who has greatly facilitated the process, both at the policy level, and in specific cases.

I should like to share with you brief summaries of activities as prepared by the staff of the Penobscot Child and Family Services Program and by CMIA staff.

The main goal of the Penobscot Nation Child/Family Services Program is to prevent the disruption and/or separation of families. The program has a variety of direct support services available to families in need. These include: Day Care, Parent Discussion Group, individual counseling, family counseling, fingerprint identification, voluntary care, advocacy, and information and referral.

During the past fiscal year, a total of 282 individuals have received services. One of the most frequently requested services is Voluntary Care. Voluntary Care is utilized when a parent is absent from the home for a short period of time. The most frequent reason for utilization of this short term foster care program is when parents attend a residential alcohol rehabilitation program. This year alone, there have been a total of 16 children in voluntary care. Out of 16, a total of 6 children have been placed in care on more than one occasion. These include a mother who underwent two triple-bypass heart operations within a three month period; and another mother who had completed the alcohol rehab program, but was unable to emotionally fulfill the needs and demands of her young child. These children were again placed in voluntary care while the mothers worked with the caseworker on goals and problem solving, with unification and stabilization of the situations being a success. To date, all but one of the 16 children have been returned to the parent's care.

The Nation has, since the start of the program, taken custody of three children. One child was returned to the parent, one child was placed for adoption with the approval and voluntary termination of parental rights by the biological mother, and one child continues to remain in the legal custody of the Nation, with physical custody of the child granted to the mother. Also, within the last two years, the Nation has taken jurisdiction of two cases from state courts. One case involves three children in the state of Maine's custody. The other case involves one child in the state of California's custody.

The Nation now has legal custody of these children and the Child/Family Services Program is currently working with the parents towards unification.

And here is a brief description of the services provided by the Central Maine Indian Association:

Off-reservation Indian families continually experience geographical, social, and cultural isolation. This situation is uniquely intensified for the significant percentage of Maine's off-reservation Indian population who are of Canadian Indian descent.

At present approximately 60% of CMIA's active case load is composed of Indian families belonging to non-federally recognized tribes. Though these peoples are afforded certain consideration under existing state policies, and stand to gain additional protection under agreements presently being negotiated, their status under the Indian Child Welfare Act remains in question. The 40% population balance is composed of members of federally recognized tribes whose home reserves range in geographic locations from Maine to Alaska.

Based on a long and undeniable history of isolation, misunderstanding and discrimination, the off-reservation Indian population frequently manifests an attitude of mistrust towards state and private non-Indian social welfare agencies. The ICWA worker, representing an Indian agency and operating with the authority of the Indian Child Welfare Act, is the critical link between the client population and the non-Indian service providers.

The present CMIA-ICWA case load divides into three primary categories:

1. Children (and the families of children) presently in state custody. Though permanent foster placement and adoption are considered and occasionally selected as the most viable alternative, the major emphasis in these cases lies in intense efforts at family reunification.
2. Children (and the families of children) at risk of being taken into state custody, requiring intervention in the form of education and supportive services.
3. Children (and the families of children) not at risk but in need of extensive supportive services.

During the past year, the majority of referrals for child and family services have come directly from the state, and hae resulted in cooperative case management. Among requests for services have been the following:

- Assistance in verification of Indian status and tribal affiliation;
- Assistance in developing culturally oriented program for non-Maine Indian children in state custody;
- Attendance at Department of Human Services case reviews.

The state has recently established a pilot program of preventive services offered to all single mothers under age 20, identified from the computer file of AFDC recipeints, and has established a policy of involving CMIA in the case of each Indian is this population.

These summaries indicate something about the scope of services offered to Indian children and families provided by the Penobscot Nation and the Central Maine Indian Association. They are intended to suggest, rather than document quantitatively the services provided

We have stressed in this presentation the good working relationship established with the state of Maine, and that this may be in part due to the historical relationship and unique legal situation. I do not believe, however, that such factors are necessary. What is essential is good will, competent staff and firm administrative leadership on both sides. It does take time to overcome old stereotypes on both sides, but we have found that a basic commitment to the best interests of children and families at risk makes for firm common ground.

Despite the success we believe we have achieved in making the Indian Child Welfare Act effective on behalf of the Indians of Maine, there are some serious problems to be addressed.

First, the level of funding available to implement the services provided for in the Act has been woefully inadequate. A minimum increase of 50 percent in funds coming to Maine for ICWA grant projects would provide a basis for effective programming.

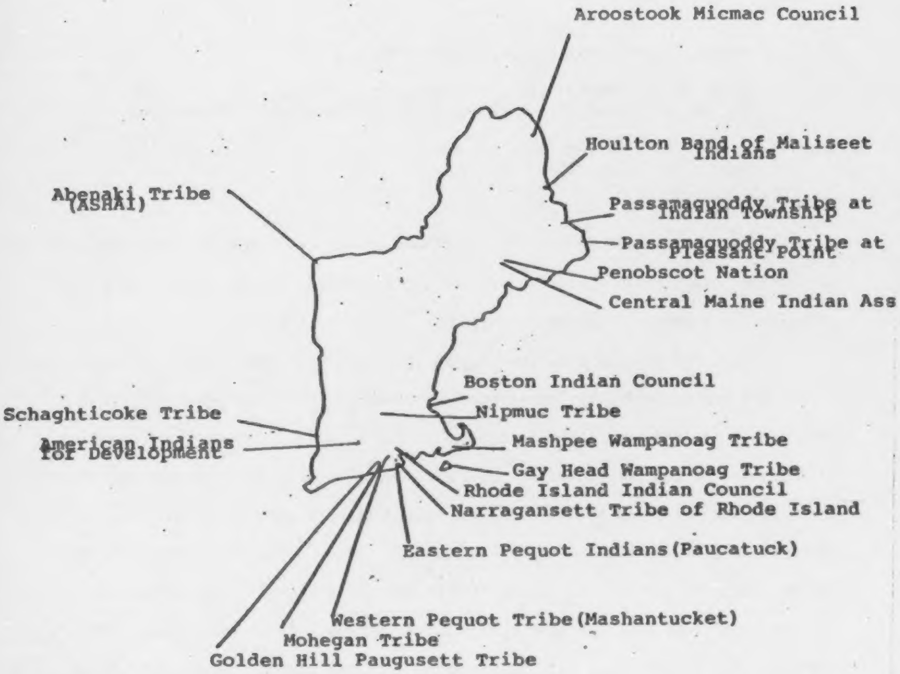
Second, to ensure that all who are eligible for the protections afforded by ICWA have access to them. Funding should be by entitlement. As the program operates now on a discretionary basis, program focus changes yearly and funding is never secure. Our program has been funded only every other year. How can anybody say to a child, "we can help you this year, but not next year; but the year after next we may be back in operation"? Yet this is what we have had to do because of erratic discretionary funding patterns. Further, these entitlement grants should be based on five (5) year periods. The average case involving a custody dispute or temporary placement of a child or family reunification runs a minimum of twelve (12) months. Working on a one year grant basis and compounding this with erratic funding is simply no sound basis for dealing with families whose problems have been a long time developing, and who need at least moderately long-term guidance and support to overcome them.

Since the Penobscot Department of Health and Human Services deals with both BIA and IHS for program support funds, we are able to make some comparisons. We believe that policies adopted by IHS for long-term planning and funding of services under P.L. 93-638 contracts is more conducive to coherant planning and effective program development. This process has required an initial needs assessment and multi-year plan, and has provided annual contract funding based on population, level of unmet need, and performance.

Finally, we believe that the goal of the Indian Child Welfare Act, which is to protect the tribal heritage and cultures of Indian peoples, will be achieved only if all Native Americans are within effective reach of this law, and the services it authorizes. Less than half of all Indians nationally live on reservations, as is also the case in Maine. If we are genuinely committed to preserving Indian communities and cultures, then some relatively universal standard, such as 25 percent blood quantum, or tribal enrollment, should be the sole criterion for service. The tortuous Federal Acknowledgement Process is simply too cumbersome. Likewise in other parts of the country, as in Maine, there are Indian tribes whose tribal patterns of living have never acknowledged national boundaries. The Jay Treaty and the Treaty of Ghent were intended to address this reality, and so-called "Canadian" Indians, for instance who need family services while living on our side of the border should be eligible.

In the final analysis we as a nation, Indian and non-Indian alike, have to decide what is really the "bottom line." For a long time now we have generally agreed that dollars are the bottom line, and services to mend at-risk families and communities are too expensive. As spublic concern moves from high divorce rate to family violence to sexual assault within the home, and the life-long cost of such experiences, we are gradually learning that we simply have not counted the right dollars, the real dollar costs. If sound families and real communities are truly the essential basis of a healthy economy, then for Indian people and communities a fully effective Indian Child Welfare Act is every bit as important as stated in the language of the law itself.

NEW ENGLAND INDIAN NATIONS AND MAJOR ORGANIZATIONS


Aroostook Micmac Council
Houlton Band of Maliseet Indians
Passamaquoddy Tribe at Indian Township
Passamaquoddy Tribe at Pleasant Point
Penobscot Nation
Central Maine Indian Ass
Abenaki Tribe (ASHAI)
Boston Indian Council
Nipmuc Tribe
Schaghticoke Tribe
American Indians for Development
Mashpee Wampanoag Tribe
Gay Head Wampanoag Tribe
Rhode Island Indian Council
Narragansett Tribe of Rhode Island
Eastern Pequot Indians(Paucatuck)
Western Pequot Tribe(Mashantucket)
Mohegan Tribe
Golden Hill Paugusett Tribe

1980 U.S. CENSUS	TOTAL	-	FAMILIES	-	19 & Under
MASSACHUSETTS	7,483	-	1,122	-	2,789
CONNECTICUT	4,431	-	688	-	1,555
MAINE	4,057	-	602	-	1,922
RHODE ISLAND	2,872	-	451	-	1,175
VERMONT	968	-	167	-	383
NEW HAMPSHIRE	1,297	-	221	-	456
	21,108		8,280		3,251

Central Maine Indian Association Inc.

Central Office — 95 Main Street, Orono, Maine 04473 (207) 866-5587/88

Sharing Resources and Ideas

May 22, 1984

To: Senate Select Committee on Indian Affairs

Fr: Maine Indian Family Support Consortium
(Penobscot Indian Nation & Central Maine Indian Assoication, Inc.)

Re: Indian Child Welfare Act Testimony

Following is an addendum to the testimony of the Maine Indian Family Support Cornortium presented on April 25, 1984 by James Sappier, Jeanne Almenas, and John Silvernail. A copy of that testimony is included for reference.

Testimony previously presented to the Senate Select Committee on Indian Affairs emphasized the predominantly successful relationship that has been developed between member agencies of the Maine Indian Family Support Consortium and the State of Maine in the implementation of the Indian Child Welfare Act. At the time of the Act's passage the State of Maine had the second highest percentage per thousand population of Indian children in state custody. Concern for the stability of the Indian family or the preservation of Indian culture appeared to be non-existant. That we have progressed so rapidly to our present level of co-operation is truly a compliment, both to the state and to Maine's Indian people. Together we have struggled to set aside centuries of prejudice and distrust. Together we have recognized the validity of the law and worked for it's enforcement. In concluding its testimony, the consortium highlighted present areas of concer. It is the purpose of this addendum to expand on these areas.

Clearly, the present funding system, in which all regional agencies compete on an annual basis for allocated, discretionary funds, is inadequate to fulfill the intent and purpose of the Indian Child Welfare Act. The stabilization of the Indian family unit and the preservation of its unique cultural heritage are not goals that can be attained and/or maintained in a single twelve month period. The damage done in two hundred years of deprevation and discrimination cannot be undone in the short time it takes for the earth to circle once around the sun.

The Maine Department of Human Services estimates that an average of one year elapses between the time a child is taken into protective custody and the time that same child is re-unified on a permanent basis with his or her family. Following this initial period of re-unification an additional six (6) to twelve (12) months may be required during which the child and family, though physically re-unified, remain under the observation (and often supervision) of the department. At the present time both member agencies of the Maine Indian Family Support Consortium have a significant number of re-unification cases in progress. Please keep in mind that a case initiated in January of 1984 may well remain open and active until June or July of 1985. The denial of the Consortium's FY '84 I.C.W.A. grant application, which appears based on an administrative decision to withdraw funding for all off-reservation services, will necessitate abandoning these families mid-process.

What good we have done, what small strides we have made towards the goals of stability and the renaissance of a previous heritage, are quickly undone and lost. We have broken the faith and broken trust. Where the law has required a service, in truth we may have provided a dis-service.

To effectively provide services to an Indian family or an Indian child the I.C.W.A. funded agency must be able to guarantee the consistant presence of it's case worker through the entire duration of the family or child's inter-action with the Department of Human Services. This consistent presence is not only necessary for the provisions of direct support to the Indian client but is critical to the development of trust on the part of the Department of Human Services and other related, service providing agencies. If these agencies cannot depend on the consistant presence and participation, how can we expect them to accept (and welcome) our involvement in the child welfare process? At a recent presentation given before a Department of Human Service's Regional meeting a consortium worker was asked by a Department supervisor, "But will you be around tomorrow?" That the worker was forced to respond with, "I can only hope so!" clearly demonstrates the concerns of both parties and the failure of the present funding system. What is now offered on an annual, competitive basis must, if we are to realize our goals, be provided by entitlement in three (3) to five (5) year grant periods.

Our original testimony stated that the present level of funding is 'woefully inadequate'. 4,360 Indians live within the State of Maine. Of these 3,521 are potentially eligible for Consortium services. In addition to those permanent state residents eligible for services we must consider both the seasonal Indian migrant population and those "Canadian" Indians who cross the border and whose right to service should be clearly established by the Jay Treaty and the Treaty of Ghent. The trust responsibility which exists, exists between the Federal government and all Indians. I.C.W.A. services, therfore, must be made available to all Indians. This potential client population, whether permanent resident, migrant, or "Canadian" is spread over a 33,215 square mile area.

In FY '83 the Maine Indian Family Support Consortium received $80,000 in I.C.W.A. funding. $80,000 with which to implement both the letter and the spirit of the Indian Child Welfare Act for 3,500 plus Indian people in a 33,215 square mile area. The task is obviously nearly impossible. What we are left with is the establishment of a system of priorities. On a day to day, case by case, basis we must decide which clients and which services are most important.

The establishment of priorities has required that a number of key areas be seriously, if not totally, neglected.

1) Education: Awareness Training:

Continued improvement in the State - Consortium - client relationship and continued improvement in the family stability and quality of life of Maine's Indian peoples is to a great extent dependent on the Consortium's ability to provide education and awareness training.

A. Maine's Indian people need to acquire the employment, living, and parenting skills necessary to create a stable home environment. In addition, they need to understand their rights under the law. The development of appropriate instructional programs and materials is critical.

B. The Department of Human Services, on both an administrative and direct service level, has expressed a strong interest in the consortium's offering a one to two day seminar presentation which would provide both protective and substitute care workers with a clear understanding of the legal responsibilities imposed on them by the Indian Child Welfare Act and an awareness of Indian culture issues. This seminar would be provided three (3) to five (5) times per year in various regions of the state. The development of appropriate material is, again, critical.

C. A similar seminar, which would be briefer and geared specifically at the legal aspects needs to be prepared for presentation to judges throughout the state. In addition, printed material needs to be made available to attorneys working with Indian children.

D. Consortium staff should have access to training opportunities. The present level of funding does not allow for the development of educational material or the participation of consortium staff in available educational programming.

2) Indian Foster Homes and Temporary Shelters:

At the present time there are only two (2) state licensed Indian foster homes off-reservation in the State of Maine. Though interest exists on the part of Indian people in assuming the role of foster parents most are unable to financially afford the cost of bringing their residences up to state standards. The development of a separate licensing procedure which would apply to off-reservation Indians coupled with a low cost home improvement program has the potential for reversing the present placement procedure.

Many Indian families within the state are separated on a temporary (and occassionally permanent) basis when for one reason or another they are forced to move and are unable to acquire adequate housing on short notice. The existance of temporary (30 day) housing facilities would significanly reduce the number of Indian families experiencing forced separation and the number of Indian children being taken into temporary state custody.

The present level of funding does not allow for the development of such foster care and shelter programs.

3) Services to Youth in State Correctional Facilities:

Approximately 10% of the youths presently incarcerated in Maine correctional facilities meet the blood quantum requirements for membership in an Indian tribe. This figure indicates that twenty times as many Indian adolescents, as opposed to non-Indian adolescents, are experiencing criminal prosecution and imprisonment. The present level of funding does not allow for the employment of a specialized youth service worker for the development of youth programming. Forced to establish priorities and forced to make choices we must set aside the needs of these deeply troubled teenagers.

The areas listed, though viewed as the most critical, represent only a portion of the need. We believe that working co-operatively the Maine Indian Family Support Consortium and the State of Maine have made great strides towards bringing both the letter and the spirit of the Indian Child Welfare Act to reality. But there is much, much further left to go.

We suggest strongly that, as discussed in the January 19, 1984 letter from Lucy C. Briggs, BIA be required to set aside funds to match those in A.N.A. Discretionary grants and the Administration on Children, Youth, and Families (ACYF) and ear mark those for consortium projects that include programs like this one who are working jointly with the state authorities whenever possible. Because we feel that contrary to the discussions of Casey Wichlacz, Sandra Spaulding, and Louise delos Reyrs that the appropriate linkages and knowledge does exist here at the local level to combine such program funds to the benefit of Indian children and families. We would request that Maine be given the opportunity by having I.C.W.A. funds ear marked for the Penobscot Nation and Central Maine Indian Association, Inc. to be matched with A.N.A. Discretionary grant funds, and use those to lever ACYF dollars through the state. This project should be funded for a minimum of three (3) years.

Respectfully submitted,

John W. Silvernail
Family Services Specialist
Central Maine Indian Association, Inc.

Mr. **Alexander**. Our next scheduled witness is Terry Brown, who is a consultant with the Coastal Consortium of California. Is he or she here?

I do see the representatives of the Puyallup Indian Tribe in the audience. We will have Connie McCloud and Larry Lamebull as our final witnesses. Welcome.

STATEMENT OF CONNIE McCLOUD, MEMBER, TRIBAL COUNCIL, PUYALLUP INDIAN TRIBE, TACOMA, WA, ACCOMPANIED BY LARRY LAMEBULL, DIRECTOR OF CHILDREN'S SERVICES, PUYALLUP INDIAN TRIBE

Ms. **McCloud**. My name is Connie McCloud, and I am a tribal council member for the Puyallup Tribe. We are a tribe located in the State of Washington. The city of Tacoma exists within our reservation boundaries, and we have just over 1,000 tribal members, but we also have within our reservation jurisdiction in Pierce County 7,000 to 8,000 Indian people who live in our community. We have various tribal operations that serve the needs of the Indian community in the city of Tacoma and Pierce County and adjoining communities in our vicinity.

Mr. Lamebull is the director of our Children's Services Program, and he will be giving you a brief review of our children's services operation there and our concerns related to the Indian Child Welfare Act.

Mr. **Alexander**. Fine.

Mr. **Lamebull**. Thank you, Connie. Due to the time constraints, I will just very briefly summarize our program and hit three topics that concern the Puyallup Tribe.

We are entering into our third quarter of 5 years of consecutive child welfare services. Some of those years have been up and some of them have been down, due to the funding process that currently is in place. We currently are the only tribe serving Pierce County that has a contract with the State of Washington to provide child protective services, family reconciliation services, child welfare services, and certification of foster homes within the tribal reservation in Pierce County. We additionally serve pregnant teenagers and certify homes for pregnant services and connect them into services through Pierce County.

As Connie stated, our service population does target between 7,000 and 8,000 within Pierce County. We operate primarily on a staff of 6½ individuals. We have one child protective services caseworker who covers the incoming caseload from the State of Washington. In our agreement, we have it set up that all incoming Indian children who go into child protective services, after they are processed in intake, are transferred into our agency. Should our agency become overloaded, which it often does because of the amount of referrals we get, we have built into our agreement that the State stop the referrals and hold them until the time that we have cleared our caseload and then process them through.

We have had a few major problems, after resuming the transfer of those cases, in actually getting the cases transferred through from the State. But through work, we hope we can iron that out at the level of the State CPS supervisor.

There are three topics I would like to cover as our major concerns: jurisdiction, funding, and education. I believe that jurisdiction and education kind of run hand in hand. Our jurisdiction problems lie mainly within relying on local area judges' personal opinions about the ability of tribal courts to handle Indian cases. We believe that in the act the tribe should have the absolute right to intervene and to transfer, should they request, from a State court. We do not always get that from our local judges. They will question the stability of the tribal court and question the services that the court will order for the child that goes into tribal court.

We would like to see that education is planted into the Indian Child Welfare Act, to mandate local judges to take some type of inservice training built into expanding their knowledge on the Indian Child Welfare Act. Many times, we have run across situations where judges have based their decisions on having to read the act right there and then and base a decision. The decisions were not thought through carefully.

The next topic would be funding. Currently, the funding process is basically ridiculous. We waste approximately 3 months out of each program year in tribes and urban organizations competing against one another for the endless count of heads and statistics. So you have 3 months of this grant writing process where almost all communications that you have worked with in urban and tribal organizations is completely broken down because no one wants to give out the information that might be helpful in their next program year's grant.

We would like to see the funding cycle be expanded to a 3-year cycle, with an evaluation on the merit system and an evaluation process at the end of that year. We would also like to see, in the area of education, that State caseworkers who handle Indian child welfare cases also be mandated to some academic training on Indian child welfare. Many times over, the notification on intake of Indian children is not done, and you go from a shelter care hearing into a dispositional hearing, and none of the processes have been followed, so you have to go back to square one. By that time, the child has sat in a non-Indian foster home or an out-of-home placement up to a couple of months. If the State caseworkers are educated to the processes of the Indian Child Welfare Act, some of this might be eliminated.

Mr. ALEXANDER. It is our understanding that the State of Washington has issued comprehensive guidelines on the issue that you have just addressed. Is it a situation of its not getting down to the field and to the individual workers?

Mr. LAMEBULL. It is just not being implemented because there are no teeth behind it.

Mr. ALEXANDER. I will ask you the question I asked the lady from Pittsburgh. In the educational institutions in your area—and there are several which, I believe, give master of social work degrees—is there any effort to coordinate with programs such as yours to provide any background to the people who, in effect, will be occupying the positions of the State social service agencies and county agencies?

Mr. LAMEBULL. I am acquainted with the associate dean of the School of Social Work at the University of Washington, and many graduates from the School of Social Work of the University of Washington. There is a general consensus that when their academic training comes to Indian child welfare, they spend exactly one lecture on it and basically it covers that there is this act, and you do have to follow it.

Mr. ALEXANDER. That is probably better than some other places. We thank you for your time and condensing your testimony. We appreciate that. We have to be out of here in a minute, so we will adjorn this hearing. Thank you.

[Whereupon, at 2:28 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL RECEIVED FOR THE RECORD

Absentee Shawnee Tribe of Oklahoma
Post Office Box 1747
Shawnee, Oklahoma 74801
Phone 275-4030

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U. S. Senate
Washington, D. C. 20510

RE: Written Testimony - Indian Child Welfare Act (PL 95-608)

Dear Senator Andrews:

The Absentee Shawnee Tribe of Oklahoma has been in full support of the Indian Child Welfare Act (PL 95-608) since its inception. This program allows Absentee Shawnee tribal members to meet child welfare problems very close to home. With our Indian Child Welfare Program, virtually all child welfare problems are cared for by the immediate family or the extended family. This philosophy and practice produces a high rate of success.

We have strong local and state support for Indian child welfare cases. The state legislature, Department of Human Services, and local agencies have all given excellent support to Indian child welfare. Also, we have helped develop a strong state network of caring people on behalf of Indian children.

In our opinion, the care of Indian children is much improved because of PL 95-608. We know of no family, agency, or tribe in our state which has negative feelings about the Indian Child Welfare Act. It has had a most positive influence in our state.

Locally, our Indian Child Welfare Program provides many provisions, some of which are as follows:

- Counseling Indian parents regarding child welfare laws.
- Interpreting federal, tribal, and state child welfare laws.
- Helping obtain legal representation for children and/or parents in court proceedings.
- Providing support for children and/or parents in state and tribal courts.
- Assisting parents in carrying out court ordered obligations.
- Clarifying cultural values which impact on child welfare cases.
- Helping prevent the breakup of Indian families.
- Linking families with resources in order to maintain children in their homes.
- Working with tribes and/or Indian organizations regarding child welfare matters.

- Providing for Indian foster and/or adoption homes.
- Monitoring state courts in child custody proceedings.
- Counseling abusive and/or negligent parents.
- Monitoring foster care placements.

The above provisions are highly appreciated and much needed by our tribal members. They know they can receive good guidance and help from our office.

One major problem of our program has been funding. Most of our funding has been through the Bureau of Indian Affairs. The Indian Child Welfare Act appropriations have not been fully funded to meet tribal needs. During this past year, two of our staff members volunteered approximately two months of their time to our program. The Bureau of Indian Affairs endeavored to help, but they simply did not have adequate appropriations.

Public Law 95-608 has created a much needed and most helpful program. This act provides services which were virtually non-existent prior to its passage, and would most likely cease to exist without continued appropriations.

Your continued support of adequate appropriations for this program will be appreciated.

Sincerely,

Dan Little Axe
Governor

DLA:jb

AGUA CALIENTE
BAND OF CAHUILLA INDIANS
441 SO. CALLE ENCILIA
SUITE 1
PALM SPRINGS, CA 92262

RECEIVED MAY 21 1984

May 15, 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington. D.C. 20510

Dear Senator Andrews:

Recently the California Legislature passed Senate Joint Resolution No. 27 which requests the California Congressional Delegation to increase the appropriation for Title II of the Indian Child Welfare Act of November 8, 1978 to the $12,000,000 level recommended by the Senate Select Committee on Indian Affairs.

On behalf of the Tribal Council and members of the Agua Caliente Band of Cahuilla Indians, I urge you to support this appropration. Congress passed this measure in 1978 to protect the integrity of Indian families by providing social services and procedures designed to keep Indian children in Indian families. More Indians live in California than in any other state, many in your district. The Act will be meaningless to these Indian families unless adequate funding is available to implement the Act. The Agua Caliente Band joins the California Legislature in urging you to support adequate funding for Indian families. Our children are our future and the $12,000,000 funding level recommended by the Senate Select Committee is absolutely essential for implementing the Act in California. Please follow the State Legislature's resolution and support this minimal level of funding.

Sincerely yours,

Richard M. Milanovich

Richard M. Milanovich
Chairman, Tribal Council
AGUA CALIENTE BAND OF
CAHUILLA INDIANS

RMM/dlc

American Indian Center

225 Valencia Street • San Francisco, CA 94103-2398

TESTIMONY ON THE OVERSITE

on the

INDIAN CHILD WELFARE ACT of 1978

o

By Phil Tingley, MSW, Manager

Human Development Division of the

Corporation for American Indian Development

o

for the Senate Select Committee on Indian Affairs

Sen. Mark Andrews, Chair

April 25, 1984

Senator Andrews, honorable members of the committee and its staff, I thank you for the counsel of the San Francisco American Indian Center on the Oversite Hearing on the Indian Child Welfare Act of 1978.

Passage of the Act Has meant that, for the first time in U.S. history, Indian families with children on a nationwide basis are receiving a level of culturally relevant Social Welfare Services and protection that prevents them from "falling thru the net" and from being separated.

This has been achieved in part thru the funding of Indian Child Welfare programs under Title II of the Act. These programs, operated by Tribal governments and multi-purpose Urban Indian Centers, have been the key to preventing the breakup of the American Indian Family.

operated by
CORPORATION FOR AMERICAN INDIAN DEVELOPMENT
(415) 552-1070

The San Francisco community of 8000 Native Americans strongly endorses supplemental funding for Title II programs in the amount of 15 million dollars.

During the past three years tribal governments and urban Indian agencies have seen a continued cut in funds for Title II Indian Child Welfare programs.

Many tribal and urban programs have had to close or have had to severly cut services. Many, many more have never been funded due to lack of Congressional appropriations. This has been especially difficult for tribal governments, who have the legal jurisdictional responsibility to deal with all child welfare matters within their respective jurisdictions. Urban Indian multi-purpose centers have also had major difficulties since they must serve the local Indian community and provide additional services to state and tribal courts, juvenile agencies, and welfare offices.

In the past three years, the San Francisco Indian Center has seen a Title II reduction in funds of twenty three percent (23%), while at the same time, have experienced a three hundred percent (300%) increase in the number of clients serviced.

Now let me comment on a few issues specific to changes that are needed within the Act and its funding:

1) Title II program funding should be moved from the Interior to the Health and Human Services Department and it should be made into a permanently funded Title.

2) The one year funding cycle should be abolished and moving to a more realistic three to five year funding cycle.

3) A monitored funding process should be established and funding criteria should be adhered to on a national basis in order to allow for consistent screening and funding practices.

4) The Act should be amended to conform to more realistic tribal/urban needs, ie: urban programs having sufficient funds and jurisdiction to force local State agencies to return Indian children to their Tribe's reservation; insuring that every tribal government has sufficient funds to take care of the needs of their local families as well as those children being returned from urban areas; extending support services to those children who are the subject or custody proceedings; providing special funds to train state court judges, court workers and local county welfare workers, etc.

5) The federal regulations written for the Act should be rewritten since, according to Russel L. Barsch (The Indian Child Welfare Act of 1978: a critical analysis. Hastings Law Journal, 1980, 31, 1287-1366), the present regulations are empty of content.

Chairman Andrews, members of the committee staff, once again let me express my appreciation for the opportunity to counsel you on the Oversite of the Indian Child Welfare Act of 1978, a law that is perhaps the single most important piece of legislation for Indian children, families, Tribes, and off-Reservation urban Indian agencies striving for community self-sufficiency. Thank You, and do not hesitate to call us for futher information.

PREPARED TESTIMONY OF THE BOSTON INDIAN COUNCIL, INC., SUBMITTED BY CLIFFORD SAUNDERS, EXECUTIVE DIRECTOR

We wish to express our appreciation to the Committee for granting the Boston Indian Council, Inc. (BIC) the opportunity to testify regarding the Indian Child Welfare Act and particularly our concerns with the inclusion of urban programs, allocation of sufficient funding and state court implementation of the Act. Since the Bill was enacted in 1978, the issues of level of funding; questions of whether urban Indian programs would be included; and disputes concerning state court implementation remain basically unresolved. Every year these three fundamental issues, which are critical to the full realization of the Act's intent, continue to be problematic because of the lack of clear and long term public policies to guarantee the rights of Indian tribes and their members recognized in the Act. Without a firm commitment on the part of this Committee to pledge adequate funding, support off-reservation Indian constituencies and ensure safeguards for state court implementation, the Act will not fully realize its goal to strengthen Indian families and reduce the numbers of Indian children placed in non-Indian homes.

Funding under the TITLE II of the Indian Child Welfare Act is best understood as an investment in society in general and in Indian tribes and their children in particular. In 1975 the Association of American Indian Affairs' study revealed that between 25-35% of all Indian children resided in non-Indian foster homes and institutions. From a purely monetary perspective, each incident of an Indian child placed outside the family represents thousands of human service dollars each year. Even more troublesome than the expense of maintaining an out-of-home placement is that very few resources are targetted to prevent Indian family break-ups. The Indian Child Welfare Act is the only source of funding that attempts to address intervention in Indian family crisis situations before they evolve into an actual family breakdown. Yet, the Bureau of Indian Affairs in its five years of administering TITLE II grants has never had sufficient funding for needed programs. The BIA on the one hand is given the responsibility for administering a key element of the Act and on the other hand is given too few resources with which to fulfill its mandate.

The Boston Indian Council understands this issue of very limited funding from yet another perspective: that of the Indian child's and his community's ability to reunite him with his family. The BIC began operating an Indian Family Support Program in 1977 through a research and demonstration grant from the Department of Health, Education and Welfare. Along with the grant came the responsibility to help Indian families remain intact and assist in the reunification of families, who were broken-up through foster care situations. Inspite of the fact that the Indian community in Boston has grown since 1977 from 3,500 to 5,000, and the Indian child welfare cases are just as numerous and severe as they were when the program began, the BIC receives less funding in 1984 than it did in 1977. Furthermore, there are too many other reservation and off-reservation programs, which are simply not funded because the allocation for Indian child welfare services is insufficient to meet the need.

One year funding cycle as opposed to two or three year grants also pose problems for tribal and community-based programs. One year grants does not allow for long term planning, staff development and training and the development of an on-going relationship with state courts and social service agencies. In addition, year-to-year grants force program administrators to spend a substantial amount of time on refunding activities as opposed to deliverying services to the community. State social service agencies come to rely on programs that have experience and expertise in Indian child welfare cases. When programs such as the BIC's Indian Family Support Program lose funding for a year, cooperative arrangements with the State and continuity of services in the community are seriously undermined.

While the mission of the ICWA is clear 'to reduce the incidence of Indian family disintegration', the funding determination on the part of this Administration is not. We understand that it is this Administration's policy to reduce the federal deficit through the reduction of human service spending. This policy, however, especially as it relates to Indian child welfare funding is short-sighted and fails to realize the full cost of neglecting the emotional as well as socio-economic potential of Indian children and the future economic stability of tribes. Today, thousands of Indian children spend years in costly foster care and institutional settings. An investment, which reduces the number of out-of-home placements, not only constitutes a great saving in future human service spending, but more importantly ensures the well-being and emotional stabililty of the Indian child. The tradeoff between appropriating funds, which strengthen Indian families and maintaining a costly foster care system is one which compromises long range human potential in the Indian community for short range political objectives.

Basic to the Indian Child Welfare Act is its implementation through the state court and social service system. However, even in instances where court and social service personnel agree with the mandates of the Act regarding the transfer of jurisdiction or priority placement of an Indian child with extended family members, there are many areas of the law that remain unclear. For instance, the BIC Indian Family Support Program has been involved with Indian child welfare cases, which necessitated the return of children to South Dakota and in one instance a small infant was returned to Alaska. Debates on "who picks up the travel costs" unfortuantely can delay the resolution of these cases for weeks and sometimes months. These unnecessary delays can be resolved in at least two ways. One method is to properly finance Indian Child Welfare Programs to assume the cost of this activity. The second possibility is to establish a set-aside, which programs and state courts nationwide could tap into when dollars are needed to transport Indian children across state borders. If the Social Service department of the BIA developed a mechanism for the prompt dispersement of these travel funds, unnecessary delays in reuniting families would be eliminated. Yet basic to both of these options is the need for sufficient dollars allocated for the cost of transferring jurisdiction from state to tribal court.

Another issue, that arises perhaps more frequently in urban areas as opposed to reservation programs, is the case where a child's mother and father belong to two different federally recognized tribes. What happens when both tribes petition for transfer of jurisdiction? Do both of these petitions cancel out because of each parent's unwillingness to recognize his/her spouse's tribal court? If this is so, is this tug-of-war procedure in fact in the "best interest of the child"?

Futhermore, inspite of the fact the Act has been in existence for nearly six years, the majority of judges, attorneys and social workers in Massachusetts are unfamiliar with the Act. This is due in part to the fact that American Indians in this State are dispersed throughout many communities and that court or social serivce personnel may only work on one Indian child welfare case in their entire career. Lack of familiarity and working knowledge of the Act pose problems for the prompt and proper resolution of Indian child welfare cases.and further demonstrates the need and importance of urban programs as advocates of Indian children and consultants to state courts in implementing ICWA mandates.

The off-reservation experience for a majority of American Indians is characterized by poverty, unemployment, crowded and/or sub-standard housing and poor health. The following data is from the 1980 Census and is included to provide a picture of what life is like for Indians in Massachusetts and to demonstrate the need for urban programs.

1. The 1980 Census reports that in 1979 there were 7,483 American Indians, 129 Eskimos and 131 Aleuts in the State.

2. 32% of Indian families have no husband present and in central cities 45% of Indian families do not have a husband present.
3. For persons 16 years and over, 36% were not in the labor force. 46% of females of the same age group were not in the labor force. 60% of females 16 to 19 were not in the labor force.
4. Income of Indian households in 1979:

Less than $5,000	21%
$5,000 to $7,499	12%
$7,500 to $9,999	13%
$10,000 to $14,999	15%
$15,000 to $19,999	13%
$20,000 to $24,999	9%
$25,000 to $34,999	12%
$35,000 to 49,999	4%
$50,00 or more	1%

The median income is $11,734 as compared to $21,754 for the population at large.

5. For females 15 years and over with income, the median income was $4,904 with only 27.4% working year-round full-time.

6.25% of Indian families receive income from public assistance.

7. Of the 482 Indian families below poverty level, 58% do not receive any type of public assistance income. Over 90% of these families have children under 18 years of age.
8. Approximately 216 Indian children reside in non-Indian homes and institutions.

The transition from reservation to urban life has been accompanied by serious social problems, which make families vulnerable to break-ups. Although there exists a close extended family network within the community that allows for cultural reinforcement, Indian people have not been prepared educationally, economically or psychologically for the change. The complexity of the urban world is heightened by direct and subtle discrimination, the realities of the urban labor market and the lack of knowledge and sensitivity on the part of human service agencies. Urban Indian programs have a unique role in helping families remain intact while making the adjustment from reservation to urban life.

In conclusion, issues of implemention, funding and viability of urban programs are critical to the ICWA. Only with adequate funding and reservation-off reservation cooperation and linkages can the Act hope to benefit the greatest number of Indian families.

PREPARED TESTIMONY OF THE BURNS PAIUTE TRIBE SUBMITTED BY VERNON SHAKE SPEAR, CHAIRMAN

The Burns Paiute Tribe has had sporatic funding from Title XX, Indian Child Welfare Act grants since initial funding year in 1979. For the three years that the Burns Paiute Tribe received funding, the goal of the project was to maintain the family unit and return displaced children to their families, if possible. The Burns Paiute Tribe is a very small Tribe with 240 members, the project estimated that 50% of the population would benefit from the project. At the end of each year of funding the project demonstrated that 75% of the population benefitted from the project. All children who were placed by the State agency within the proximity of the Burns Paiute Reservation were returned to their families. Prior to the funding there were no (0) Indian foster homes, there are now 2 Indian foster homes and 2 emergency shelter homes. The Burns Paiute Tribe is a non-280 Tribe which gives the Tribe jurisdiction over Indian Child Welfare matters. Because of this status, the State of Oregon will not pay for foster care on the reservation. The Burns Paiute Tribe does not have the resources of it's own to purchase foster/shelter care and this is a hardship on the families who are providing this service. Attached is testimony that was submitted to the State of OREGON, Children's Services Division in May, 1981, regarding the Proposed Indian Child Welfare Act rules for the State of Oregon. Since submission of testimony at the State level, no action has transpired from that time. The Burns Paiute Tribe has had no Indian Child Welfare Program for the past two fiscal years with no other services being provided by the B.I.A., the State or the Tribe. The need is escalating and will be described in the problem statement. Based on the allocation received from these awards, the cost per client has been $103.00, this is far below the standard cost of services provided at the State agencies.

Listed are the specific problems that the Burns Paiute Tribe has experienced with the implementation of the Indian Child Welfare Act and the State of Oregon.

1. Since the Indian Child Welfare Act grant money, Title 20, began in 1979, the Burns Paiute Tribe has received the grant in 1979, 1980 amd 1982. The inconsistent manner the awards are made has resulted in the Burns Paiute Tribe's inability to make realistic planning regarding the Indian Child Welfare. The Burns Paiute Tribe is placed under the jurisdiction of the Warm Springs Agency which is located 200 miles away. Traditionally, the agency BIA is responsible for providing Indian Child Welfare needs and Social Services, at some point in time the Warm Springs Agency decided they did not need the BIA services of Child Welfare and Social Services, so those services were no longer provided by the BIA. Therefore, the Burns Paiutes were left without these services provided to them. When the Burns Paiute Tribe is not selected for an award of the Title 20, Indian Child Welfare Grant, the Tribe is unable to deliver any type of child welfare service. The inconsistent funding is a major problem to the Burns Paiute Tribe. The competitive process often eliminates the smaller Tribe. All factors are not taken into consideration when the awards are being made.

2. 50% of the people of the Burns Paiute Tribe who are now of parenting age were raised in non-Indian homes, located away from the reservation. This has proved a great hardship in providing services as well as addressing the cultural needs. Most of these people have returned to the area with the hope of reuniting with their families upon reaching adulthood. This has proven to be a very difficult task for the returning persons as well as the community members, due to the difference in communication, values and culture.

3. The Burns Paiute Tribe has submitted a State-Tribal agreement with no success. The State did not respond to the Agreement, after the Tribal Attorney made several attempts to request a response from the State, the Agreement went ignored. The Indian Child Welfare Act provides for Tribes to make such agreements but, it appears from the experience that the Burns Paiute Tribe has had with the State, that unless the State has full control of the decision making it will ignore any action that is not fully initiated by itself. This leaves the Tribe with no alternative, which leads to another concern. The concern of how a Tribe can deal with a State that fails to comply with Federal law.

4. Funding (with #1) Another problem with funding is the fact that if a Tribe who received an award had a specific task ie: Tribal Children's Code, they would be denied an award if they put that task in an an activity in a later proposal. Some clarity needs to be established in such cases. A Tribe can develop a Tribal Children's Code and four years later find that revisions are needed or further amendments are necessary. This is an area that the Portland Area has not funded or made provisions for.

5. In the Portland Area which is the Area that the Burns Paiute is under has not provided the Burns Paiute Tribe with updating or implementing of the Indian Child Welfare Act with the Tribal Council and the Burns Paiute Tribal organization. This is the responsibility of the B.I.A.

6. Definitions that need redefining are: "expert witness", Child-custody proceedings. The interpretation of these definitions on the part of the State agencies are judgmental and irrelevent to the needs of the Indian culture and social structure. Child custody proceedings are unclear, notification to the Tribe is after the initial proceeding has begun, which delays the time for the Tribe to intervene. All notification should begin immediately when a child is initially entering any type of placement.

The Indian Child Welfare Act was passed without an appropriation which makes the legislation little of non effect in the delivery of services. The service delivery varies greatly from tribe to tribe. There was a recommendation to appropriate $15,000,000.00 with the passage of the Act. $15,000,000.00 is the recommended appropriation to carry out the intent of the Act. Other recommendations are:

To establish the funding cycle for three years to allow continuity of services.

The emphasis of the funding should be towards development of programs.

Suggestion to evaluate BIA and other Indian monies to determine where the money is spent and if it is equitable.

A priority is the establishment of Tribal Children's Court.

That some mechanism for enforcing the Indian Child Welfare Act's implementation and it's intent, be developed, for the States to follow.

This concludes our testimony. Thank you for the opportunity to provide this testimony. We would be willing to answer any questions that you may have regarding this written testimony.

Your Honor:

My name is Wanda Johnson. I wish to address your court regarding a centralized record keeping system.

The Federal Act requires that all records be kept by the State. We feel that there will be difficulties in locating particular records if records are to be kept in a branch office where proceedings were initiated.

This would be near impossible for an out-of-State Tribe if the branch office is not known. We feel very strongly that a centralized location be kept and that records be available to a childs tribe at any time, thus relieving any child of any unnecessary stay in a shelter until they can be reunited with family.

The Burns Paiute Reservation has experienced a large number of our children that have been placed by the C.S.D. into non-Indian homes out of our area, some have since moved out of State. Having this experience with the C.S.D., there is a strong need that the State have a centralized record location. Thus, enabling any child that has a need to retrieve his or her familiy ties which will assist them or their children to enroll in our Tribe if they choose to do so.

Wanda Johnson
Parent Committee

Your Honor:

My name is Cheryle Ann Kennedy, Mental Health Specialist and Consultant for the Burns Paiute Tribe regarding Indian Child Welfare.

I am going to address two issues regarding the C.S.D.'s proposed rules on the implementation of the Indian Child Welfare Act.

The first issue is the definition of expert witness. Due to past experiences with having a "qualified expert witness", which was usually a non-Indian caseworker, the Burns Paiute tribe has suffered the effects by having their children placed out of their home and community. The impact that a qualified expert witness carries in the court room is paramount therefore, the need to adopt the definition for expert witness as stated in the draft rules that we are presenting is mandatory.

FOSTER CARE PAYMENTS

The status of the Burns Paiute Reservation is non-280, which allows for the Tribe to govern, manage and plan for their own children and any problem that may arise around child welfare. The difficulty that surrounds this area is the fact that the State of Oregon C.S.D. feels there is no need to assist the Burns Paiute Reservation in making payment for any substitute care that may occur due to the fact the C.S.D. would have no control over the situation.

According to the Attorney Generals' opinion on Indian Child placements, he stated that C.S.D. could indeed make payments for foster care for Indian children placed in foster homes on the reservation although the child was not in the custody of C.S.D.

The question of payment would then hinge upon the availability of C.S.D.'s foster care payment funding. If the question is in actuality the "availability of foster care payment monies", then there should be no problem, for the Indian population is only four percent of the total population of Oregon. We are not asking for a large proportion of the funding, only what is entitled to all the residents of Oregon who are in need of these services.

Cheryle Kennedy, CHR/MHS
Burns Paiute Reservation

Statement of Sande Schmidt
Tribal Attorney for Burns Paiutes

May 8, 1981
Bend, Oregon

Hearings on Proposed State ICWA Rules

I am Sande Schmidt, tribal attorney for the Burns Paiutes. Others from the tribe have told you the concerns of the tribe, and of the need for these rules. The tribe has spent much time reviewing these rules; you should give considerable thought to their comments.

I draw your attention to some technical omissions in CSD's proposed rules. CSD caseworkers may have only these rules to use in making decisions affecting Indian children. These rules should be as complete as possible and provide as much direction to caseworkers as possible. For these reasons, the alternate rules we have proposed cover some areas not mentioned in CSD's proposed rules.

The first is the area of tribal-state agreements. The ICWA authorizes States and tribes to enter into agreements concerning the care and custody of Indian children and jurisdiction. 25 USC §1919. The proposed CSD rules refer to these agreements a couple of times but do not make it clear that these agreements may override the rules. Caseworkers need to be alerted that procedures, jurisdiction, placement preferences, and other matters may be different for a particular tribe because of such an agreement. Our proposed Rule 412-26-J40 alerts caseworkers that these agreements exist, that they may override the rules, and that caseworkers can learn the existence and terms of such agreements at the central records office.

The second area involves cooperation between CSD and tribal courts. Last year the Oregon Attorney General, in Opinion #7899, determined that CSD has the power to accept custody of children and to provide services to children through tribal courts. The proposed CSD rules do not refer to this power. Caseworkers may not have access to the AG's opinion, so this power should be spelled out in the rules. We drafted Rule 412-26-045 to fill this gap. Under this proposed rule CSD caseworkers know they can work with tribal courts in providing services and in accepting custody of children.

The third area concerns the making of payments by CSD to Indian foster homes. Indian foster parents should receive foster payments whether or not CSD has legal custody of the children involved. Indians should not be forced to choose between state financial aid and the protections of the ICWA. In the same Attorney General's Opinion (#7899), it was determined that CSD may make payments to Indian foster homes even though CSD does not have custody. But again, caseworkers may not have access to this Opinion, so this information should be in the rules. We proposed amending the existing payment rules to conform to the AG's Opinion and to let caseworkers know that payments are permitted in such cases.

Centralized recordkeeping?

Your Honor:

My name is Truman Teeman, I am an enrolled member of the Burns Paiute Tribe. I am also Chairman of the Parent Committee for the Tribe. I am going on record to relate how the State Agencys have handled Indian Child Welfare and the need to adopt the proposed rules that have been written along with the other tribes. Historically, the State Agencys have dealt with the Indian Child Welfare in the following manner.

The Burns Paiute Tribe is a small band of Paiutes that live in and around Burns, Oregon. The population has always been very small, children making up the most part. During the mid-forties and thru the early sixties, 50% of our children had been placed in foster homes away from the natural environment of the reservation and were adopted by non-Indians.

Many of the Indian families were told that they could not support their children or they came from broken homes and the Welfare Department therefore gained custody of these children and placed them in "suitable" homes. Most of these homes were in the Willamette Valley miles from their homeland and generally were non-Indian homes. In most of these cases families were not allowed to see the adopted children or to know where and with whom they had been placed. In one instance a grandfather to one boy wanted to keep his grandson but was told by the Welfare Department he didn't have the funds to support him.

Due to most of the children being placed in non-Indian homes they lost their language and their Indian values. Consequently today many of these adults do not know their Indian heritage and have lost their Indian identity and are trying to find themselves.

CHILD AND FAMILY CONSORTIUM

OMAHA UNIT
Jessaline Anderson, Director
P.O. Box 368
Macy, NE 68039
402-837-5391

WINNEBAGO UNIT
Norma Stealer, Director
P.O. Box 626
Winnebago, NE 68071
402-878-2570

April 25, 1984

Senator Mark Andrews, Chairman
Select Committee/Indian Affairs
United States Senate
Washington, D.C. 20510

Re P.L. 95-608 THE INDIAN CHILD WELFARE ACT

Dear Senator Andrews:

The Omaha and Winnebago Tribes of Nebraska occupy two reservations adjacent to one another, in the northeast corner of Nebraska. After serious deliberation, the Omaha and Winnebago Tribal Councils resolved to form the CHILD AND FAMILY CONSORTIUM to adapt their child welfare services to effect a greater impact upon its direct services to tribal members and upon the state judicial system and the public welfare agencies.

The Consortium proposes to serve 575 individuals in various service areas. The starting date is June 1, 1984, and will conclude on May 31, 1985. Due to our combined service area population of 3,331 we requested funding at the minimum funding level for consortiums in the amount of $150,000.00.

The Consortium's broader goals and objectives address Consortium - State Agreements regarding foster care licensing and the addition of Indian Child Welfare Regulations to the state welfare manual. The tribal units have goals and objectives which directly meet the needs of their respective tribal members, which are within the guidelines of the Indian Child Welfare Act.

We believe that the track record of the two tribal child welfare programs for the past three years is a sound base upon which the two tribes may continue to build cooperative ventures in providing improved and more sophisticated services to their tribal members.

OMAHA CHILD & FAMILY SERVICES

Under Public Law 280, the Omaha Tribe retroceeded in October 1978, and maintains exclusive jurisdiction in all child custody proceedings. The Omaha Child & Family Services, funded by Title II of the Indian Child Welfare Act, has been in operation since May 1979.

The Omaha Child & Family Services is a service-oriented project and provides supportive and direct social services to children and families involved in child custody proceedings both locally and out-of-state. Two of the most successful services our program provides are 1) Recreational services and activities for the youth, as a preventative factor; The orientation is cultural activities, emphasizing the Omaha Clan Structure and the tribal value system. The development of a volunteer program utilizing tribal elders and extended family members meets the cultural needs and support needs of the youth. 2) Child Protective Services and Committee, organized to provide protective services to reservation children. The primary concern is to evaluate child welfare cases using a team review approach, to design an individual treatment plan and a letter of agreement by the parents, to monitor foster care placements and to assign service responsibilities among the Committee members.

The FY 83 funding is $50,000.00. Program staff includes three full-time positions: Project Director, Social Service Worker, Youth Resource Worker and a part-time Secretary. Salaries constitute more than two-thirds of the budget. The proposed Consortium budget would have allowed the maintenance of this staff level, with an increase in supportive services, such as transportation and training.

Services to children and families:

FY 81: 126 children & 29 adults accomplished
FY 82: 155 children & 40 adults accomplished
FY 83: 200 children & 50 adults accomplished
FY 84: 265 children & 60 adults projected

WINNEBAGO CHILD & FAMILY SERVICES

Pursuant to the Indian Child Welfare Act, the Winnebago Tribe of Nebraska petitioned the Secretary of the Interior to Resume Exclusive Jurisdiction over child custody cases involving Winnebago children in any state court in the United States. This "Reassumption of Jurisdiction" was approved, including a proposed Juvenile Code. Given this legal mandate, the Children's Court began operation on June 21, 1982, expressly for the welfare of any Indian child on the Winnebago Reservation and for any Winnebago child involved in state court for reasons of neglect or dependency.

The Winnebago Child & Family Services grant program's overall purpose is to promote the stability of Indian families through early intervention prior to formal court action and to prevent the breakup of Indian families which come before the Winnebago Tribal Children's Court and who may come before any juvenile or family court in the United States for reasons of neglect or dependency.

For program year beginning September 1, 1983 and ending May 31, 1948, Child & Family Services was awarded $50,000.00 to fund a Secretary, a Counselor and a Project Director, to provide services to 200 individuals (150 children and 50 adult/parents).

In the first six months of this year, we have provided services to families involving 78 children.

A JOINT PROJECT OF THE OMAHA AND WINNEBAGO TRIBES OF NEBRASKA

The two most successful services our program provides are

1.) Protection for the reservation child. The seven year old Child Welfare Committee comprised of school, tribal health, PHS community health and BIA social services meets weekly to coordinate all child welfare services on the reservation. The Committee screens for resources required before any off-reservation case is returned to Winnebago.

2.) Advocacy for the urban Winnebago family. State courts are beginning to develop a respect for Tribes and to acknowledge their right to be a party to the proceeding involving tribal members. State social services must be reminded that they are equally responsible to the parent for rehabilitation as they are to the children in protection. Once we apprise both the parent(s) and the social worker of this obligation, services finally begin to assist the family at reunification.

The two least successful service activities are

1.) Transfer of Jurisdiction of healthy infants from other states. If the children are older, if they have behavior or psychological problems, the state is more willing to allow the transfer back to the reservation.

2.) Cooperative investigations of physical and sexual abuse reports regarding reservation children. Because Nebraska is governed by P.L. 280, civil and criminal jurisdiction is vested with the State of Nebraska when it concerns Winnebago Indians. The local county sheriff does not believe that the Winnebago Tribe has jurisdiction in child welfare cases.

A JOINT PROJECT OF THE OMAHA AND WINNEBAGO TRIBES OF NEBRASKA

EFFECT OF BUDGET CUTS

Financially, the Omaha Unit will be able to maintain only the Director and supportive expenses. Their caseload capability will decrease by 75%. The Winnebago Unit will be able to maintain one direct service staff. The caseload capability will be cut by 60%.

Administratively, the Tribes will become less effective in their ability to maintain and develop further their relationships to the state judicial system and to the public welfare system. Case work, direct services will become so demanding that in-depth development of an equitable partnership between tribes and state social services will be discontinued. The intent of the Indian Child Welfare Act which speaks to "full faith and credit" cannot be completed.

Progress in promoting the states' cooperation and compliance with the Indian Child Welfare Act is sure to slide backwards and Tribes will become ignored once again by states' juvenile justice systems.

Therefore, we urgently request your advocacy and leadership in assuring us that funding levels will not be reduced as is presently being proposed. Thank you for your consideration in this crucial concern to the American Indian Tribes and their children.

Very truly yours,

Norma Stealer

Norma Stealer, Director
Winnebago Unit

Concur:

Jessiline Anderson

Jessiline Anderson, Director
Omaha Unit

A JOINT PROJECT OF THE OMAHA AND WINNEBAGO TRIBES OF NEBRASKA

THE SAULT STE. MARIE TRIBE OF
CHIPPEWA INDIANS
206 GREENOUGH ST.
SAULT SAINTE MARIE,
MICHIGAN 49783

April 12, 1984

RECEIVED APR 16 1984

Senator Mark Andrews
Select Committee on Indian Affairs
724 Senate Hart Building
Washington, D. C. 20510

Dear Senator Andrews,

This letter shall address the oversight hearings on the Indian Child Welfare appropriations for FY 85. Looking back to the 1982 and 1983 budgets of 9.7 million dollars and the proposed 7.7 million dollars for FY 85, it will not be possible to provide the same quality service to Indian people that has been provided in the past.

The intent of the Indian Child Welfare Act is to give proper care of Indian children needing adoptive or foster home care. It's main objective is to restrict the placement of Indian children by non-Indian social agencies in non-Indian homes and environments.

The 12 million dollars recommended by the Senate Select Committee will insure protection of the best interests of Indian children and their families by providing assistance and funding to Indian tribes and organizations in the operation of child and family service programs which reflect the unique values of Indian culture and promote the stability and security of Indian families.

I would, however, recommend that the competitive nature of the program be eliminated and the child welfare appropriations be allocated to Tribes on a case or population basis or a combination of the two. Indian organizations should continue to be competitive with a specific set-aside which they would compete for.

We have sent this same letter to Senator James McClure, Chairman, Appropriations Sub-Committee on Interior and Related Agencies and we respectfully requested that this letter be entered as part of the record of the hearings to be held on April 25, 1984. Due to cutbacks and deficits in federal funding and given the economic conditions of the nation's reservations, we want to thank you for your support in the past and ask for your continued support for FY 85.

Sincerely,

Joseph K. Lumsden
Tribal Chairman

JKL/kf

TESTIMONY OF ROSS O. SWIMMER, PRINCIPAL CHIEF, CHEROKEE NATION OF OKLAHOMA, TO THE INDIAN CHILD WELFARE ACT OVERSIGHT HEARINGS CONDUCTED BY THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE. SUBMITTED MAY 22, 1984.

When the Cherokee Nation of Oklahoma began planning its response to the Indian Child Welfare Act following passage of that Act by Congress in 1978, priority was given to the following considerations:

(1) A tribal child welfare program should address the root causes for the high rates of placement of our children (400% of the rate for non-Indian children in Oklahoma).

(2) The program should be constituted in such a manner that there would be little or no duplication of the services offered by other agencies, in particular the Child Welfare Unit of the Oklahoma Department of Human Services.

In attempting to research the causes for the high placement rate of Cherokee children, we looked first at the systems already in place to deal with child abuse and neglect and with placement of children: the Oklahoma juvenile justice system and the Department of Human Services. In examining the court system, we found no evidence of any overt efforts to remove Cherokee children from their families on a wholesale basis, as the placement rates might indicate. On the contrary, we found several judges and district attorneys who were themselves Cherokee and a number of others who seemed to make a true effort to be understanding and considerate of Cherokee culture and values. In examining the staff of the Department of Human Services, we found a similar situation. Instances in which Department of Human Services staff have shown open bias against Cherokee people have been very rare. If discrimination existed, it was isolated, well hidden, and thus extremely difficult to confront openly.

Continuing our attempts to identify the causes for the high placement rates, we looked introspectively at our own Cherokee people and our culture. We know that Cherokee people tend to value their children highly. Physical abuse is extremely rare. Sexual abuse is present but not in numbers sufficient to justify the placement rates. Child neglect occurs more frequently but, again, not at so great a rate as to explain the high incidence of placement.

We therefore came to the conclusion that the most significant root cause for the high placement rate of our children lay not with the existing child welfare and court systems nor with the Indian people and their culture, but with the absolute incompatibility of these two entities. The point at which the state child welfare/court system and Indian culture meet is characterized by a gigantic gap in understanding, communications, and trust. These two disparate entities share almost no commonalities, either in historical development, ways of viewing the world, or responses to problem situations. When the two systems, state child welfare and Indian culture, were forced by circumstances to deal with each other, the results were almost always disastrous, with Indian people and their culture usually being defeated by the stronger, more powerful state system.

The Cherokee Nation saw as its clear mission, therefore, the development of a program to act as a buffer between Indian culture and the state child welfare system in order to enable Cherokee families to obtain more positive outcomes and to prevent unnecessary separation of Cherokee families and their children while providing for the protection of those children. Our program was created to address specific situations which were occurring all too frequently and were hurting Cherokee people. Such a program, by definition, accomplishes our second stated goal of avoiding duplication of existing child welfare services. Among the specific situations which the Cherokee Nation's Indian Child Welfare Program addresses are the following:

(1) The Language Barrier

It is estimated that 20-25% of the Cherokee Nation's 60,000 tribal members speak the Cherokee language. In many of our traditional homes, Cherokee is the only language used for daily communication among families. While most of those persons who speak Cherokee also speak some English, many of them prefer to speak Cherokee and are able to communicate much more expressively in the Cherokee language. To our knowledge, none of the state child welfare workers, judges, or district attorneys in our service area are fluent in Cherokee, nor do they ask for an interpreter if the client appears able to speak any English at all. This situation results in very poor communication between Cherokee families and public authorities regarding child welfare matters. One of the more tragic illustrations of this problem is the parent who comes to the tribal office to request tribal child welfare staff to find out why his or her child has been removed from the home by the police. Usually, police officials and state child welfare staff have explained the removal to the parent at the time, but due to the parent's fear and panic coupled with his or her minimal grasp of English, the parent was unable to understand the explanation given.

Bilingual tribal child welfare staff have been able to provide assistance to families in such situations, and we have done forceful advocacy with law enforcement and state child welfare and court officials to sensitize them to the special attention that must be given to communication with Cherokee-speaking families. By doing so, we have reached the point where state child welfare workers often call on our bilingual child welfare staff to accompany them on investigations of complaints of child abuse or neglect involving Cherokee-speaking families. In this way, the parents and children receive full explanations of the alleged problem and the process in their own language and are enabled to more fully and expressively explain their situation to another Cherokee-speaker. Often, removal of the children from the home is avoided simply by improved communications between the family and the state child welfare worker.

Bilingual tribal staff are also skilled at explaining court procedures and processes to Cherokee-speaking families, thus allaying the fear of the unknown which had often led to panic on the part of families who did not understand the court system. We also insist that all Cherokee-speaking clients and witnesses be provided with interpreters during court proceedings. By simply addressing the obvious problem of language barriers, our program has greatly improved communications and understanding between Cherokee people and the state child welfare and court systems.

(2) Lack of Trust in Formal Systems

Indian people have good reasons to traditionally distrust the white man's system of justice and agencies such as the Department of Human Services. They have seen Indian children removed from their families, for no reason apparent to the Indian community, and placed in institutions, foster homes, and adoptive placements, never to be seen or heard from again.

Therefore, when an Indian child is removed from the home by the court, even if on a temporary, emergency basis, Indian families tend to see the situation as hopeless and often believe that there is no chance of their child being returned to them, even if the court and the state child welfare staff tell them that return is possible or even probable. The reaction of many Indian parents upon removal of their child is to simply give up. They feel powerless to fight the system. Almost always, they become depressed, often severely so. Some turn to alcohol or drugs, and others simply move away and disappear.

The role of tribal child welfare staff is to develop trusting relationships with the parents whose children have been removed and to help them see and deal with the situation in a more hopeful, realistic manner. Often this requires persistent casework efforts on behalf of tribal staff, as well as negotiations with the courts and state child welfare workers to set realistic and attainable goals for the parents to accomplish in order to secure the return of the child. Tribal staff expend as much time and effort as is necessary in order to develop trusting, caring relationships with parents, to enhance their self-confidence and sense of competence, and to provide services to enable them to solve the problems which led to placement of their children. Such intensive services are not limited to traditional casework tasks, such as counseling and referral, but almost always involve strong advocacy efforts; supportive services such as transportation, assistance with finances and housing, coordination with medical resources, help with educational or employment problems, and parent aide services; and the utilization of existing community grassroots helping systems within the traditional context of Cherokee culture.

The success of such services is borne out by the fact that during the first three years of the Cherokee Nation's Indian Child Welfare Program, these intensive services and advocacy efforts have resulted in 87% of Cherokee children for whom the state has recommended removal from the home being able to remain safely with the family.

In order to insure that these children remain safe in the homes of their parents or extended family members, our Indian Child Welfare Program has a policy of never closing a case on a family. Even after the court case has been dismissed and the state child welfare case has been closed, we retain each family on open status and check with them periodically to see that the children are safe, that the family is continuing to function well, and to let them know that we care about the welfare of their family and their children. If problems arise, families feel free to call upon us for help, and we again utilize all the resources available to enable the families to deal with and find solutions to the problems confronting them.

(3) Cultural Differences

Often situations which look like abuse or neglect to state child welfare staff investigating an Indian family are simply cultural differences. One example is the Indian concept of the extended family, in which a child is not merely the responsibility of his parents but also of a wide circle of family members related by blood or by tradition. It is common for a child to reside with family members other than parents for varying periods of time and, sometimes, throughout his or her entire childhood. State child welfare workers often perceive such situations as parental abandonment and want to take action to correct the situation. Tribal staff intervene in these instances to interpret the cultural values to the state workers and the court to avoid the child being removed from what is, to the family, a desirable and natural situation. Tribal staff have also done a great deal of work to educate state child welfare workers and judges to this particular cultural characteristic in order to prevent unnecessary investigations of reported abandonment, which only serve to frighten and alarm families.

Another cultural difference which if often misinterpreted is the degree of supervision which Indian parents feel is appropriate for children. Indian people tend to believe that children require a certain amount of freedom in order to explore the world and learn from their experiences. Children are judged not by their chronological age but by the degree of maturity and responsibility which they have acquired. An Indian parent may feel perfectly comfortable with leaving and eight year old child at home alone for limited periods of time or with leaving a ten year old child to look after younger siblings. Often, family members or neighbors are close by and available to the child should he or she need assistance. On the other hand, most police departments will pick up any child under the age of twelve who is without direct adult supervision, and often state child welfare workers will request the court to order emergency removal in such situations. By educating police and state child welfare workers to look more closely at such situations and to try to see the circumstances from the Indian parent's point of view, many such emergency removals are being avoided. In cases where removal occurs under such circumstances, tribal staff are usually able to facilitate the prompt return of the child and the avoidance of court action.

A number of other such situations arising out of the disparity between the values of our Indian culture and those of white society occur. Tribal staff are usually able to help resolve such situations through negotiation with and education of the state systems.

(4) Poverty and Neglect

A great many of our Indian people in Oklahoma live in abject poverty. Unemployment is high among Cherokees, and 27.4% of the families receiving Aid to Families with Dependent Children in the nine counties totally within the boundaries of the Cherokee Nation are Indian, compared with a statewide percentage of 11% Indian recipients. These figures are particularly striking when it is noted that only 5.6% of the population of Oklahoma is Indian, according to the 1980 U. S. Census.

Poverty is often confused with child neglect, particularly by state child welfare workers who tend to be white and have middle-class values. To avoid needless removal of Cherokee children from their homes due to poverty which looks like neglect, our tribal child welfare staff have been trained to become specialists in discriminating between the two and are often called upon by state child welfare workers to assist in initial investigations of complaints of child neglect. In this way, we are able to prevent removal of children for alleged neglect where the real problem is poverty. We are also able to offer services to these families to help them locate resources for employment, training, and financial assistance to enable them to raise their economic standard of living, not just for the children but for the family as a whole.

In cases where neglect is identified but is not severe enough to warrant removal of the children, many state child welfare staff refer the families to our tribal child welfare program for services. We also receive neglect referrals from other agencies, from family members, and from individuals in the community. We provide intensive services to such families, based on trusting relationships, to help them to understand the effects on the children and to build their self-confidence to enable them to make positive changes and remediate the neglectful situation.

The Cherokee Nation Indian Child Welfare Program considers working with neglectful families to be our specialty. Other agencies are reluctant to deal with neglect due to the fact that change usually comes very slowly, if at all, and a great deal of patience and genuine concern is required to really be able to assist a neglectful family. We feel that the problem of child neglect has long been overlooked, ignored, and put aside by state child welfare agencies, and we are committed to filling this service gap by making child neglect services a priority of our program. In general, tribal staff have usually been able to obtain positive results with neglectful families. Although gains are often slow and difficult to measure, we feel we have had a positive impact on reducing child neglect among the families with whom we have worked.

(5) Alcohol-Related Problems

There is often a great disparity between the way Indian people and white people view the alcohol problem among Indians. While a white person, such as a state child welfare worker, may view a person as an abusing or neglecting parent who also drinks, Indian people may look at that same person and see a basically good parent who loves his or her children but may be abusing or neglecting them due to severe problems with alcohol abuse. State courts and child welfare workers may view the alcohol problem as a contributing factor and request that the parent receive alcohol treatment in conjunction with a multi-faceted service plan. Tribal child welfare workers, on the other hand, realize that, until the alcohol abuse is stopped, the parent is incapable of carrying out any of the other provisions of a court-ordered service plan and is being set up for failure. Our staff's first priority is to help the client obtain treatment for the alcohol problem, including inpatient treatment if needed, utilizing all the resources available through Indian organizations and other agencies for alcohol treatment. Once the parent stops drinking, the concomitant problems usually abate as well, and often the children can be safely returned home at that point. We also realize that alcoholism is a lifelong problem, that relapses may occur, and that consistent follow-up and services may be needed for years in order to insure that the children remain safe and protected.

(6) Extended Family and Intra-Tribal Placement of Children

It has been a long, difficult battle to insure that state courts and state child welfare staff comply with the Indian Child Welfare Act requirements for extended family placement. It is much easier for a state worker to place a child into a readily available white foster home than to seek out extended family placements. Our tribal child welfare staff have been very insistent that extended family placements be made where possible, and we have backed up our insistence with concrete assistance in locating and evaluating extended family placements. By doing so, we have reached a point where extended family placements are the norm rather than the exception for children who must be separated from their parents to insure their safety.

We have also worked very diligently to insure that Cherokee children are placed in Cherokee foster and adoptive homes when there are no relative placements available. We feel that our role is to serve as a link between the foster and adoptive home programs of the Department of Human Services and the people of our Cherokee communities. We have taken an active responsibility in recruiting, screening, and assisting in the certification process of Cherokee families for foster and adoptive care. Through our intensive efforts in this area over the past year, the number of state-certified Cherokee foster homes in northeastern Oklahoma has increased from 17 in February, 1983, to 40 in January, 1984. We have also recruited and referred a sufficient number of Cherokee adoptive parents that no Cherokee child has had to be adopted to a non-Cherokee family since the inception of our tribal child welfare program.

The number of Cherokee families needing services from our Indian Child Welfare Program is far more that our program has been able to serve on the funds allotted by the Bureau of Indian Affairs. Program staff estimate that they could easily identify 4,000 - 5,000 persons per year among our tribe who are involved in abusing or neglecting situations or are at high risk for abuse or neglect. Our services are limited, then, not by the lack of need, but by the amount of funds and staff we have been able to obtain. During each year that our budget and staff have increased, so also have the numbers of our referrals. Yet we are still unable to reach all of the potential child welfare clients among our population due to lack of sufficient staff and resources. The following table will serve to further emphasize this point:

PROGRAM YEAR	FUNDS REQUESTED	FUNDS GRANTED	PERSONS SERVED	NOTICES/ REFERRALS RECEIVED	NEW COURT CASES (INTERVENTIONS)	COURT APPEARANCES	CLIENT CONTACTS	AGENCY CONTACTS	FOSTER/ ADOPTIVE CONTACTS	INFORMATION/ REFERRAL
1979-80	$68,116*	-0-								
1980-81	$252,188	$40,604	510	118	17	14	188	502	28	42
1981-82	$249,508	$70,487	557	129	27	48	783	670	24	81
1982-83	$276,959	$138,109	1,042	146	30	61	2,056	2,458	156	373
1983-84 (Partial: 75% of current program year)	$271,707	$166,030	1.100**	335	27	80	3,155	3,546	154	187
1984-85 (Begins 7/1/84)	$289,621	$157,047***								

*Planning Funds Requested

**Estimated

***Verbal notification only. Have not yet received official Notice of Grant Award for FY 1984-85.

The decreased amount of funding available to Indian Child Welfare Programs comes at a time when child abuse and neglect is increasing nationwide and such programs are more crucial than ever. In the nine counties of northeastern Oklahoma which are wholly within the boundaries of the Cherokee Nation, the number of confirmed incidents of child abuse and neglect has increased by 400% over the past four years. This drastic increase is due partly to economic stress in our area but may also partially be due to increased reporting as a result of more publicity and visibility of such programs as our Indian Child Welfare Program. Nationwide, 45 states reported increases in 1983, according to the American Humane Association.

Tribal Indian Child Welfare Programs are working well and are providing direct services to prevent children from being harmed while preventing family separation. Tribal programs are filling a gap in services which has been catastrophically damaging to Indian people over the years and has resulted in untold numbers of Indian children being uprooted from their families and their culture.

Tribal Indian Child Welfare Programs are able to provide services economically and without the waste so often present in state and federally operated programs. In our current Indian Child Welfare budget, for example, 72% of our total grant is utilized for direct personnel costs, including salaries, fringe benefits, and contractual attorney services. Our average cost per client per year, based on our total budget, is only $112.00. Few programs can manage the intensive, quality services we provide on that amount of money.

Almost all the problems experienced by our tribe in conjunction with the Indian Child Welfare Act result from the funding procedures utilized by the Bureau of Indian Affairs. Indian Child Welfare funds are awarded on the basis of competitive annual grants. Each tribe competes against all other tribes and urban programs within its Bureau Service Area. The disadvantages and problems of this system include the following:

(1) The competitive nature of the grants inhibits cooperation among tribes. Full and complete cooperation among tribes and urban programs located in the same geographic region is absolutely essential to the fulfillment of the provisions and the intent of the Indian Child Welfare Act. While most tribes and urban organizations have made an effort to

rise above the competitive aspects of funding in order to coordinate to provide more and better services to our Indian people, the underlying awareness of the competitive grant process permeates all our dealings with each other and inhibits trust and cooperation.

(2) Preparation of a full and complete proposal each year takes a great deal of staff time away from direct services. The proposal preparation is time-consuming and repetitive, as is the Bureau's annual proposal review process.

(3) Due to the competitive annual grant process, it is impossible for tribes to adequately plan programs for more than one year at a time. The one-year nature of the grants inhibits tribes from expanding program scope to include components which cannot be completed within one year. For example, our tribe has considered implementing our own foster home program, but the prospect of initiating such a program one year, placing children in foster care, then possibly receiving no grant the following year and leaving children in limbo in foster homes prevents us from instituting such a program.

(4) The grant approval process places too little emphasis on a program's previous performance. More weight should be given to program performance reports and evaluations which indicate the level and quality of services provided.

(5) No training or technical assistance has been made available to our program by the Bureau for the past two years, other than a pre-submission review of our proposal each year by the Agency Superintendent.

In view of the above-listed difficulties, we would respectfully make the following recommendations:

(1) That overall funding for tribal Indian Child Welfare Programs be increased substantially in order to allow current services to be expanded to meet the critical unmet needs of abusive and neglectful Indian families and to prevent the breakup of the Indian family unit.

(2) That grants be awarded for at least a three year period, contingent upon satisfactory performance.

(3) That grant funds be distributed nationwide rather than on an Area-by-Area formula.

(4) That the primary considerations in awarding of grants be:
  (A) Tribal population
  (B) Demonstrated program performance.

(5) That the provision of training and technical assistance to Indian Child Welfare Programs should be a mandated function of each Area Social Worker of the Bureau of Indian Affairs.

In summary, the Indian Child Welfare Act is, as far as our tribe is concerned, effective in carrying out the intent of Congress to prevent the unnecessary breakup of Indian families and to give Indian people the opportunity to solve our own problems with child abuse and neglect. With the recommendations we have made, especially in regard to increased funding for tribal child welfare programs, we are confident that tribes will be able to completely fulfill the purpose of the Indian Child Welfare Act and find solutions to the problems which led to its passage by Congress.

On behalf of the Cherokee Nation of Oklahoma, I want to express my appreciation for the opportunity to present our views to your Committee.

Ross O. Swimmer, Principal Chief
Cherokee Nation of Oklahoma

Attachment: Joint Resolution of the Councils of the
Cherokee Nation of Oklahoma and the Eastern Band of the Cherokees

Joint Council Meeting
of
Eastern Band of Cherokee Indians
and the
Cherokee Nation of Oklahoma
April 6-7, 1984
Red Clay Historical Area
Cleveland, Tennessee

RESOLUTION NO. ________(1984)

WHEREAS: The Indian Child Welfare Act was passed to encourage Indian Tribes to provide much needed social services to the children of their membership, and

WHEREAS: the Act has been successfully implemented by the Cherokee Nation and the Eastern Band of Cherokee Indians, and

WHEREAS: There have been reductions in funding to the tribes although the ratings of the grants have been high, evaluations of the programs superior, and the Bureau of Indian Affairs held its annual training program in Cherokee to "show-off" the program.

NOW, THEREFORE BE IT RESOLVED by the Tribal Council of the Eastern Band of Cherokee Indians and the Cherokee Nation, meeting jointly at the Red Clay Historical Area, that both tribes will exert their influence through their congressional delegations to encourage full funding of the Indian Child Welfare Act.

BE IT FURTHER RESOLVED that both tribes will meet with representatives of the Bureau of Indian Affairs to discuss the continuing need for funding of their programs and the necessity to reward program excellence with genuine support for their goals in funds as well as praise.

CERTIFICATION

We, the officials of the Eastern Band of Cherokee Indians and the Cherokee Nation of Oklahoma do hereby certify that the Council members in attendance at this legally called joint meeting in which there was a quorum present on April 7th, 1984 adopted the foreground resolution.

Ross O Swimmer

Ross O. Swimmer, Principal Chief
Cherokee Nation of Oklahoma

Robert Youngdeer, Principal Chief
Eastern Band of Cherokee Indians

Wilma P. Mankiller

Wilma Mankiller, Deputy Chief
Cherokee Nation of oklahoma

Robin E. Toineeta

Robin Toineeta, Vice Chief
Eastern Band of Cherokee Indians

Colville Confederated Tribes
P.O. Box 150 - Nespelem, Washington 99155 (509) 634-4711

May 30, 1984

RECEIVED JUN 0 4 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington D.C. 20510
Attention: Pete Taylor

Honorable Mark Andrews:

The purpose of this letter is to submit the enclosed signed resolutions from the Colville Confederated Tribes regarding the Indian Child Welfare Act (P.L. 95 - 608).

Please include the resolutions as part of the written testimony for the record.

Your consideration and assistance is greatly appreciated.

Sincerely,

COLVILLE CONFEDERATED TRIBES

Al Aubert

Al Aubertin, Chairman
Colville Business Council

Enclosures:

EK:AA:hp

cc: H.E.W. Committee, C.C.T.
Steven Unger
Don Milligan
Larry Jordan, HRD Director

1984-365

RESOLUTION

WHEREAS, the Colville Business Council is the governing body of the Confederated Tribes of the Colville Indian Reservation, Washington, by authority of the Constitution and By-laws of the Tribes as approved on February 26, 1938, by the Commissioner of Indian Affairs; and

WHEREAS, "the Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U.S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families;"

WHEREAS, "the U.S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stabability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture;"

WHEREAS, the states, exercising Jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families;"

WHEREAS, in order to accomplish the above goals Indian tribal governments, Indian organizations, and the Bureau of Indian Affairs must develop and implement a system for monitoring and technical assistance to state courts, state agencies, and private agencies;"

WHEREAS, the Colville Confederated Tribes obtained Exclusive Jurisdiction of Child Welfare matters on February 14, 1980.

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council, meeting in SPECIAL Session, this 21st day of MAY, 1984, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby authorize a committee to develop methods of monitoring State Courts on Child Welfare proceedings on a State by State basis.

The foregoing was duly enacted by the Colville Business Council by a vote of 11 FOR 0 AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

Al Aubertin, Chairman
Colville Business Council

1984-364

RESOLUTION

WHEREAS, the Colville Business Council is the governing body of the Confederated Tribes of the Colville Indian Reservation, Washington, by authority of the Constitution and By-Laws of the Tribes as approved on February 26, 1938, by the Commissioner of Indian Affairs; and

WHEREAS, "The Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U. S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families;" and

WHEREAS, "the U. S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stablity and security of Indian tribes and families by the establishment of minimum FEderal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture;" and

WHEREAS, "the states, exercising Jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families;" and

WHEREAS, in order to accomplish the above goals Indian tribal governments, Indian organizations, and the Bureau of Indian Affairs must develop and implement a system for monitoring and technical assistance to State courts, state agencies, and private agencies; and

WHEREAS, the Colville Confederated Tribes obtained Exclusive Jurisdiction of Child Welfare matters on February 14, 1980.

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council, meeting in SPECIAL Session, this 21st day of MAY, 1984, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby recommend that the Indian Child Welfare Act include voluntary placements and reqlinquishments.

The foregoing was duly enacted by the Colville Business Council by a vote of 10 FOR 0 AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

Al Aubertin, Chairman
Colville Business Council

1984-363

RESOLUTION

WHEREAS, the Colville Business Council is the governing body of the Confederated Tribes of the Colville Indian Reservation, Washington, by authority of the Constitution and By-laws of the Tribes as approved on February 26, 1938, by the Commissioner of Indian Affairs; and

WHEREAS, "The Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U. S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families;" and

WHEREAS, "the U. S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stablity and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture;" and

WHEREAS, "the states, exercising Jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families; and

WHEREAS, in order to accomplish the above goals Indian tribal governments Indian organizations, and the Bureau of Indian Affairs must develop and implement a system for monitoring and technical assistance to state courts, state agencies, and private agencies; and

WHEREAS, the Colville Confederated Tribes obtained Exclusive Jurisdiction of Child Welfare matters on February 14, 1980.

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council, meeting in SPECIAL Session, this 21st day of MARCH,1984, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby recommend an appropriated amount of $15 M for purpose of implementing the Indian Child Welfare Act.

The foregoing was duly enacted by the Colville Business Council by a vote of 11 FOR 0 AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

Al Aubertin, Chairman
Colville Business Council

May 16, 1984

WRITTEN TESTIMONY

COMMENTS AND RECOMENDATIONS

Submitted by

THE OREGON LEGISLATIVE COMMISSION ON INDIAN SERVICES

To

THE CONGRESSIONAL OVERSIGHT COMMITTEE

On the Indian Child Welfare Act of 1978

Honorable Senator Mark Andrews and Members of the Oversight Committee:

The Commission on Indian Services was created in 1975 by Oregon statute to advise the State of Oregon and others on the needs and concerns of American Indians in the State of Oregon. As part of this obligation, the Commission wishes to urge you to review these comments and recommendations relating to the Indian Child Welfare Act of 1978.

GENERAL COMMENTS

The Indian Child Welfare Act is a powerful law for Indian children, families and tribes. In many instances it has reunited Indian families and has spared much of the trauma of unwarranted separation. Among some of the positive effects of the ICWA are that it has insured Indian tribes a role in determining custody proceedings and has improved and enhanced state/tribal relations in working with Indian children and families.

RECOMMENDATIONS:

1. **THE COMMISSION ON INDIAN SERVICES RECOMMENDS AN INCREASE IN THE LEVEL OF FUNDING FOR ICWA PROGRAMS.** Though the Act has had positive impact, it hasn't been enough. The potential impact is lessened because of the lack of resources available to tribes. Most Oregon tribes do not have the resources to fund their own tribal child welfare programs and therefore are dependent upon federal funding. When such funding is not forthcoming, then tribes are unable to provide needed family services.

Also because of a lack of resources, tribes are often not able to exert the full rights they have under the Act. If a tribe feels it cannot provide the needed social services, it will not request that cases be transferred to tribal courts or that the child be placed on the reservation. Congress can and should fulfill its trust responsibility to Indian people and the hope it created in passing the ICWA by providing adequate levels of funding. This Commission recommends a funding level of at least 10 million dollars.

2. THE COMMISSION ON INDIAN SERVICES RECOMMENDS A CHANGE IN THE PRESENT METHOD OF FUNDING FOR ICWA PROGRAMS. The annual competitive process reduces the impact of even the minimal funding that has been available. Under the present funding method, programs are funded only for 1 year and then must reapply and compete with other applicants for funding. This may result in a newly funded grantee setting up a program, establishing contacts in the community, and being looked to as a service provider, only to close after one year because it did not receive a grant the next year. To avoid this, a different method of funding ICWA programs should be developed, such as entitlements or multi-year funding.

3. THE COMMISSION ON INDIAN SERVICES RECOMMENDS THE ESTABLISHMENT OF A MECHANISM TO MONITOR STATE, FEDERAL, AND TRIBAL COMPLIANCE OF THE ACT. None exists. Neither the Bureau of Indian Affairs nor any other agency is charged with monitoring compliance. Non-Compliance does exist be it due to ignorance, misunderstanding, or flagrant violation.

4. THE COMMISSION ON INDIAN SERVICES RECOMMENDS THAT A NOTICE TO TRIBES BE REQUIRED UNDER THE ACT FOR VOLUNTARY PLACEMENTS. Though the Act requires notice to tribes, authorizes tribal intervention, and provides for invalidation of proceedings for involuntary placements; there is no such clarity regarding voluntary placements. The Act does provide that tribes may alter the voluntary palcement preferences by resolution, but there is no requirement that tribes be contacted to ascertain this preference. Because of this absence of a clear invalidation provision, those handling voluntary adoptins may conclude that they can ignore the placement preferences of the Act with impunity.

5. THE COMMISSION ON INDIAN SERVICES RECOMMENDS DEVELOPING CLARITY IN THE DEFINITION OF CHILD CUSTODY PROCEEDINGS. At present it is unclear if such proceedings include cases when the state intervenes in an Indian home and places a child under state supervision but does not remove the child from the home. In such cases, the tribe should be notified and the provisions of the Act should apply.

6. THE COMMISSION ON INDIAN SERVICES RECOMMENDS FURTHER DEVELOPMENT OF EMERGENCY REMOVAL PROVISIONS WHICH CLEARLY APPLY AND ARE FAVORABLE TO EMERGENCY REMOVAL OF INDIAN CHILDREN DOMICILED IN OFF-RESERVATION HOMES. At present, the only reference in the Act to emergency removal is to children domiciled on a reservation.

7. THE COMMISSION ON INDIAN SERVICES RECOMMENDS CLEAR INCLUSION OF TERMINATED TRIBES IN THE PROVISIONS OF THE ICWA. Oregon tribes were the most seriously affected by Congress's Termination Policy in the 1950's and early 60's. Of the 109 tribes and bands terminated nationally, 62 of them were in Oregon. Nevertheless, many of these tribes and bands continue to exist as distinct communitys of Indian people and some have been able to have their federal recognition restored. ICWA policy specifically allows for the funding of Child Welfare programs of terminated tribes but does not extend as specifically, the protections and safeguards guarenteed by the Act to such terminated Tribes. The families and children of these tribes have a need for these safeguards and protections equal to, if not greater than the needs of those families and children of federally recognized tribes. This gross inconsistency must be remedied to include the terminated tribes.

In closing, I wish to say again that the ICWA is working in Oregon. Our courts, State children's authority, and the Legislature are fully aware and committed to its application as demonstrated by the withstanding of a challenge to the Act's constitutionality, the informal extension of the spirit of the law to terminated tribes, and the passage of a 1983 law amending Oregon adoption statutes requiring compliance with the Act. We do though, need it to work better.

Although there are other technical problems with the Act, we include no further recommendations. Should the Committee consider technical amendments to the ICWA we would welcome the chance to comment upon them.

Thank you for the opportunity to share our views.

Respectfully submitted on behalf of the Oregon Legislative Commission on Indian Services by:

Katherine M. Gorospe,
Katherine M. Gorospe
Executive Secretary, Commission on Indian Services

TESTIMONY SUBMITTED TO
THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
REGARDING IMPLEMENTATION OF THE
INDIAN CHILD WELFARE ACT

SUBMITTED BY THE

CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON

May 30, 1984

The Confederated Tribes of Siletz Indians of Oregon has had tremendous success enhancing family welfare and preventing the unwarranted breakup of tribal families since passage of the Indian Child Welfare Act of 1978. Although funding levels for Title II programs are kept woefully low by inadequate appropriations, and tribes are forced to compete for these funds, our Tribe's social service program has continued to provide needed services and legal representation to troubled families.

Despite the overall success of efforts to implement the Indian Child Welfare Act, over the years we have identified several areas where the Act was not wholly adequate to meet the pending emergency. Below we set forth the areas where we think improvement in the Act is appropriate and offer justification for our recommendations.

On several occasions, we have encountered opposition to our intervention in cases involving Siletz families because the children were not eligible for "enrollment." For example, two children in a family with the same mother but different fathers, one of whom is not eligible for enrollment, arguably will receive separate treatment in a state custody proceeding. This can happen even though both children are culturally part of the Tribe and are looked upon by the Tribe as members of our community.

This denial of rights stems primarily from state agencies' failure to understand the distinction between "enrollment" and "membership." We suggest, therefore, that the term "membership" be added to the definitions and be defined as follows:

> "Membership" shall mean being enrolled or eligible for enrollment in an Indian tribe or being considered by an Indian Tribe to be a part of that Indian community.

We also have had difficulty on occasion involving our social service people in state rehabilitative programs for troubled Siletz families because no formal "child custody proceeding" had been initiated. For example, in some cases, the state social service people are able to impose standards of conduct on a family under the threat of filing a custody case. Thus, the family is embroiled with the state social service agency, with family breakup as the possible end result, without the legal right to the support mechanism provided by tribal social services. Therefore, we suggest that the definition of child custody proceeding be expanded to include the following as subsection (v) of section (1) of the definitions:

> Any other state agency involvement with an Indian family which could result in a foster care placement, termination of parental rights, preadoptive placement or adoptive placement as defined herein.

To be consistent with the foregoing, the first sentence of 25 U.S.C. §1912(a) should be amended to read as follows: "In any involuntary, child custody proceeding in a state court...." This change would ensure that the tribes are given notice of any involuntary action which could result in a foster care placement or termination of parental rights.

Our Tribe also has identified situations where indigent families were denied the appointment of counsel in "informal" or "preliminary" hearings. Because the informal hearing do not make "legal" determinations of custody, the state agency justifies its failure to appoint counsel for the parents.

In many instances, however, these informal hearings are the critical stage in a case, for it is the failure to meet unreasonable standards imposed on the family at these proceedings which result in the initiation of a custody case. To avoid this situation, we suggest the first sentence of 25 U.S.C. §1912(b) be amended to read as follows:

> In any case in which the court or state agency determines indigency, the parent or Indian custodian shall have the right to court appointed counsel in any child custody proceeding as defined herein.

This will ensure that families are appointed counsel at all stages of proceedings which could have an effect on family unity.

Our Tribe also has experienced difficulty in reviewing the case files of state social service agencies even though these records were relied upon in preparing evidence presented to support the breakup of an Indian family. As the Act reads presently, we have only the right to review those records which have been submitted to the court and on which the court might rely in making a determination. Under state law, we have greater authority to receive records but it has been argued that because we received our party status pursuant to the Indian Child Welfare Act and not state law, we are limited to the discovery granted by the Act. To correct this situation, we suggest that 25 U.S.C. §1912(c) be modified to read as follows:

> Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the *same right of discovery as any other party to the proceeding and at a minimum*, shall have the right to examine *and copy* all reports or other documents filed with the court *or which were reviewed in preparation for giving oral testimony in a hearing* involving foster placement or termination of parental rights.

In one case, our Tribe faced an interpretation by an attorney for the State of Oregon that a request for anonymity on the part of a parent in an adoption case was grounds to preclude any tribal involvement in the adoptive placement of a tribal member. This interpretation is wholly inconsistent with the requirement that *every* placement follow the placement preference of the Act absent *good cause* and the requirement only that *weight* be given to requests for anonymity by parents. To prevent this kind of unreasonable interpretation, we request that the proviso at the end of §1915(c) be amended to read as follows:

> *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give

> weight to such desire in applying the preferences but such request for anonymity shall not be used as the sole basis to deny tribal involvement in the appropriate placement of the child.

To further ensure that the tribes' placement preferences are followed, we suggest that §1914 be amended and renumbered as §1916. Thus, §1915 would become §1914 and §1916 would become §1915. These provisions then would be followed by what is now §1914, which should be amended to read as follows:

> Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, or the subject of any voluntary relinquishment, any parent or any custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of Sections 1911,1912, 1913, 1914 or 1915 of this Title.

By accomplishing the foregoing, states will be required not only to fulfill the jurisdictional, remedial services, voluntary consent and burdens of proof standards imposed by the Act but also will be required to meet the placement preferences of the tribes. Failure to do so will create the possibility of having a disposition overturned at a later date. While the Act presently implies that placements made in violation of the preferences are subject to being vacated in the future, it does not explicitly so provide. The foregoing recommendation will ensure that no question exists regarding the intent of the Act to enforce tribal placement preferences.

The Tribe also suggests that §1916(a) [under our recommendation, §1915(a)] be modified slightly to ensure that biological parents have the opportunity to reacquire custody of their child following a failed adoption. As it stands now, the provision does not specifically require notice to such parents following the failed adoption. Thus, we suggest that §1916(a) be amended to read as follows:

> Not withstanding state law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian shall be given notice and the opportunity to petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of §1912 of this Title, that such return of custody is not in the best interest of the child.

Finally, we have a suggestion regarding emergency placements under §1922. As the Act stands now, the State has no authority to take emergency custody of an Indian child who is not subject to the exclusive jurisdiction of an Indian tribe by virtue of his residence or domicile on an Indian reservation. The remedial services and other provisions technically must be complied with if the child is otherwise subject to state actions before a removal can be effected.

We have heard state agencies threaten that they will not touch any emergency case involving an Indian child. They fear that, unless they can determine that the child is a resident or is domiciled on a reservation, the removal will be invalid. Clearly, this creates a threatening situation for the children of our Tribe and we suggest that the §1922 be amended as follows:

> Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child, regardless of whether he or she is subject to the exclusive jurisdiction of an Indian tribe, from his parent or

> Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent the imminent physical damage or harm to the child. The State authority, official, or agency involved shall ensure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent the imminent physical damage or harm to the child or, if the child is not subject to the exclusive jurisdiction of an Indian tribe, expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, or if the child is subject to the exclusive jurisdiction of an Indian tribe, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian as may be appropriate.

This recommendation also attempts to clarify the present wording of §1922, which is somewhat confusing about what rights it grants to states. States have used the present provision to initiate custody proceedings even where the emergency which caused the initial removal had ceased to exist. While that may be appropriate if the state otherwise has jurisdiction, clearly the Act did not intend to give states continuing jurisdiction if the child otherwise was subject to the exclusive jurisdiction of the tribe.

Again, we want to emphasize our complete support for the Indian Child Welfare Act and the benefits our Tribe and our families have received from it. The foregoing suggestions are merely ideas which reflect ways in which we feel the Act can better work for us. We thank the Committee for the opportunity to submit the testimony.

CONSORTIUM OF COASTAL INDIAN RANCHERIAS
INDIAN CHILD & FAMILY SERVICES
P.O. Box 1120
Trinidad, California 95570
707-677-3035

RECEIVED MAY 0 8 1984

May 1, 1984

Senator Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
838 Hart Building
Washington, D.C. 20510

Dear Committee Members:

The Consortium has operated a program funded under the Indian Child Welfare Act since September, 1981. Program activities include family supportive services, recruitment of Indian foster and adoptive homes, and cultural activities for Indian children living in non-Indian homes.

Because of the distance and cost involved in attending the recently held oversite hearings on the ICWA, our program was not able to send someone to testify. However, the following written testimony is being submitted by our organization for the record. It is our understanding that the record is kept open for written testimony for two weeks after the hearing date. Our concerns deal mainly with the issues of the ICWA implementation and the funding process.

ICWA IMPLEMENTATION

One of our biggest concerns is the fact that the Act as written applies only to a small number of Indian children in California. Although the Act should be liberally construed in order to be in accord with the intent of Congress, many agencies take a strict interpretation in determining if the provisions of the Act apply to Indian children. All California Indians are members of aboriginal Indian tribes which have existed in California and which continue to exist today. Yet none of these tribes are the Indian tribes which are federally recognized today. The federally recognized tribes are those Indian entities which are from the reservations and rancherias created by the federal government within California. These federally recognized tribes are very important, however the ICW rights of all California Indians are also very important even if they are not enrolled members of federally recognized tribes from reservations. The provisions of the Act should also apply to their children. The BIA Guidelines to State Courts

Del Norte County Outreach Office • 227 Price Mall • Crescent City, California 95531 • (707) 464-1121
Humboldt County Outreach Office • 904 G Street • Eureka, California 95501 • (707) 445-3008

state "Enrollment is the common evidentiary means of establishing Indian status but it is not the only means...." A definition of Indian child and tribe which takes into account the historical and legal relationship of Indians should be made. The question of eligibility for services as resolved by the Snyder Act and court interpretations of the Snyder Act should be followed in determining if the Act applies to an Indian child. This would include a broader base of California Indians.

The ICWA also contains some significant oversights. The Act does not require notice to anyone regarding pre-adoptive or adoptive hearings. It also limits the right to intervene to two situations - foster care placements and termination of parental rights. After the Indian parent's rights are terminated, there does not appear to be any way for any party to intervene at some later date to ensure that the court follows pre-adoptive and adoptive placement preference required by the Act. Even if someone could intervene, no one could be aware of their intervention rights since there is no notice provision. Similarly Section 1916 (a) gives petition rights to Indian parents or custodians (following specified events) but there is no notice requirement to either of the parties, so they would not know the appropriate time to petition. Section 1916 (b) likewise indicates that changes in placement should meet provisions of the Act but in certain instances of foster care, pre-adoptive and adoptive placements, no notice requirements are called for. Also, the law bestows on an Indian child who was the subject of an adoptive placement, the right to apply for information. But unless the child self-initiates or has self-knowledge, there is no provision of notice to the child that he or she can apply for such information.

There is no mechanism to monitor state courts compliance with the Act. Many state court decisions have not been efforts to deal positively with the goals of the Act. Often times the courts actions defeat the intent of the Act. The fact that the Act does not include placements based upon an act, which, if committed by an adult, would be deemed a crime has been deterimental to some Indian youth. We are aware of cases where Indian children have continued to be classified under the "602" Welfare and Institutions Code Section so that the provisions of the Act would not have to be complied with. In other circumstances these youth, based on present behaviors, would have been reclassified as "601's". Our program is also aware of many cases where Indian children were placed in non-Indian homes at a very young age. The court process moves so slowly that an Indian parent trying to obtain custody has to face many delays in the proceedings. Usually by the time a court decision regarding final placement can be made, the child has been in the non-Indian home several years. The relationship the child has developed with the non-Indian caregivers is often cited as "good cause to the contrary" for not following placement priority specified in the Act. Although the Guidelines to State Courts state that ".....children younger than 5 can be expected to adjust more readily to change", these guidelines are ignored by the courts as are the potential detremental long range effects of the placement (ie. identity crisis, poor self-concept). According to the guidelines the courts are to routinely ask if a child is an Indian child. We are not aware of this question ever being asked in the courtroom as a matter of course. Although the guidelines do not have binding legislative effect, they are crucial to effective implementation of the Act. They must be utilized by attorneys in this field, and judges who must enforce the law. Utilization of the guidelines would have a tremendous impact on the outcome of individual cases.

There also is no mechanism to monitor compliance of the Act by state, county, and private agencies involved in child welfare matters. Recently a state wide survey was done by the California State Department of Social Services reviewing compliance of provisions of the Act by county welfare departments. This survey found a 70% - 80% failure rate for proper notification and that 50% of Indian children were placed out of the preference order specified. The survey also found that proper identification of Indian children is a problem. We are concerned that little or no action seems to be taken by the BIA offices on the notices of hearings received. Local agencies routinely send required notices to the Bureau. What happens to these notices when they are received is a mystery. Attempts to notify the tribe seem minimal. As discussed earlier, in many cases, "tribes" are not available to assist. Notices pursuant to the Act must be handled effectively and quickly. It would be helpful to all involved if ICW programs within the geographic area of the hearing are informed of the hearing by the Bureau.

A weakness of the Act is that it does not make provisions for providing legal representation to tribes. Although tribes are given the right to intervene and be a party to the hearing, most smaller tribes do not have the financial resources to pay for legal representation. Tribes, as well as Indian parents and custodians, should have the right to court appointed counsel if needed, to ensure their interests are protected. If court appointed counsel is not available to the tribe, funding for a lawyer should be available through the Bureau.

The Bureau should very strongly consider providing funds for legal services for ICW cases routinely. The need for adequate legal representation is outstanding. Perhaps a contract with an agency such as California Indian Legal Services could be developed. Presently California Indian Legal Services has very little resources. Because of their limited resources they seem reluctant to become involved in these cases. Although court appointed counsel is often available for indigent parents, this representation is usually insufficient. The attorney provides bare minimum required for the case and this naturally affects the outcome of the case. Securing proper legal counsel is a must and the Act and the Bureau should address this adequately.

FUNDING

A higher level of funding is necessary nationwide in order to meet the needs of Indian families, ie. legal representation, foster home licensing by tribes, and in order for tribes to implement the Act to it's fullest extend (ie. developing tribal court systems in PL 280 states). In order for ICW programs or tribes to accept full responsibility for care/custody of Indian children needing placement they must have resources available to meet this responsibility. At present, funding levels of most programs do not allow this, so ultimately the decisions affecting Indian children are still made by local governmental agencies. At one time there was much discussion of increased appropriations through additional funds provided by the Department of Health and Human Services. This has yet to materialize.

California's share of ICW funds have been drastically reduced over the past several years. Reductions imposed on California, the state with the largest number of Indian residents, have been much greater than in other states. An equitable share of ICW funds, based on population and need, must be restored to California. The allocation system used in recent years have violated California Indian's rights to equal protection under the Act.

Within the state itself, funding should be distributed more equitably and meaningfully. In our rural area, an ICW program with a much smaller service area and population base than our program, gets $50,000 more in funding. Also, the monthly reimbursement system used by the Bureau is slow and causes severe cash flow problems that affect service delivery. A reimbursement system that pays funds quarterly in advance may alleviate this problem.

The time span allowed for preparation of grant proposals is not adequate. At least 60 days should be allowed for this activity. Programs should be funded on a more long-term basis. Having to reapply for funding every year is detrimental to program development. This uncertainty of program existance year to year also affects the ICW programs relationships with other agencies. Often times programs are preconcieved by these agencies to be short lived, inadequate and uninfluencial. The stability offered by more long term funding would improve this situation as well as affect program development capability.

Although this testimony is not all inclusive, the issues presented here are some areas of concern. The opportunity to express these concerns as part of the record of proceedings to the Senate Select Committee on Indian Affairs is appreciated.

Sincerely,

Julie Mannarino

Julie Mannarino, M.S.W.
Program Coordinator

JM:sh

Copper River Native Association
ATNA' T'AENE NENE'
Drawer H • Copper Center, Alaska 99573 • Phone (907) 822-5241

HS84-1649

RECEIVED MAY 21 1984

May 15, 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20150

ATTN: Pete Taylor

RE: Indian Child Welfare Act

It is imperative that direct service programs, such as this, have continuity. If they do not, the credibility and effectiveness of the effort is seriously impaired. The ICWA program here at CRNA has been beneficial but has suffered from "on-again, off-again" funding and the concomitant change of staff. This leads to a lack of community trust in personnel and a lack of credibility for the program.

For these reasons, we feel that funding for the ICWA program should be on-going.

Sincerely,

Edna Charley by B McLeod

Edna Charley
Executive Director

EC/RW/mp

INTER-TRIBAL COUNCIL
OF
MICHIGAN, INC.
405 East Easterday Avenue Sault Ste. Marie, Michigan 49783
Phone (906) 632-6896

Ottawa
Potawatomi
Ojibwa

RECEIVED MAY 22 1984

May 18, 1984

Mr. Mark Andrews, Chairman
Selection Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510

RE: P.L. 93-608, Indian Child Welfare Act Oversight Hearings

Dear Mr. Andrews:

I would like to take this opportunity to present written testimony on the above referenced topic as an individual who has been a part of the system. I am presently the Executive Director for the Inter-Tribal Council of Michigan, Inc., however, for three years prior to this I have worked as the Child Welfare Attorney representing and working with our four member tribes in all types of child welfare activities. I feel that we are probably one of the most active and advanced states when it comes to the implementation of the Indian Child Welfare Act. This has led to many advances in the services available for our people, but not without a like number of problems. These have in some instances been overcome with assistance from the very helpful staff of the Michigan Department of Social Services, who have worked with us to develop an Indian Child Placement Agency and a group home licensed for eight (8) juvenile males and located on one of our member reservations.

I feel that maybe a little history is probably needed at this point to put my final remarks in perspective. Michigan when the Inter-Tribal Council was incorporated in 1969 had four federally recognized tribal groups which are the present members and were serviced by a Bureau of Indian Affairs Agency office located in Ashland, Wisconsin. This was changed in April 1976 with the establishment of a Michigan Agency located in Sault Ste. Marie, Michigan. The portion of the Ashland Agencies budget allocable to Michigan activities was to be transferred to the new Michigan Agency, well we knew that the services we were receiving were limited but the dollars transferred were even more so. This has continued to be the type of treatment the Michigan Agency receives and is especially true when a review, by State, is made of Child Welfare Programs approved in February 1984.

Bay Mills Reservation
Brimley, Michigan 49715

Keweenaw Bay Reservation
L'Anse, Michigan 49946

Isabella Reservation
Mt. Pleasant, Michigan 48858

Hannahville Reservation
Wilson, Michigan 49896

According to our statistics and available information the Minneapolis Area Office received a cut in funding this year which totaled $224,000.00 leaving approximately $1,077,000.00 to dispurse. The problem is further documented by the following facts. Michigan contracts will total approxmately $119,000.00 less than last year which means we absorbed 53% of the cut allocated to the Area Office. This is a reduction of 38% from the Michigan funding level of one year ago. The Inter-Tribal Council of Michigan, Inc., program took 48% of the Michigan cut or aproximately 25% of that received by the Minneapolis Area. In as much as these grants are designed for urban as well as tribal groups, we feel that the total Indian population of the State should be considered when program allocations are made. According to the 1980 Census Michgan has a larger Indian population than either Wisconsin or Minnesota, yet our total share of the funding which was never equitable has been further reduced from a 26% share of the total for 1983 to an 18% share for the 1984 programs presently funded.

My major concern is that whenever we develop a program that works and starts to address problems long ignored or left dormant we are cut. The mere fact that we have had some minor successes does not mean that our needs have been met and we can go on to something else, it should instead show that there is a need for the program and continued funding is required to complete the system before reductions to maintenance levels are adviseable.

If there are any questions or comments regarding my testimony I would be more than happy to respond to them. I would also like to thank you and your commitee for taking the time to consider my comments.

Sincerely,

Michael C Parish

Michael C. Parish
Executive Director

ac

cc: Tribal Chairpersons

Wallace Murray, Chairman
Nelson White, Vice Chairman
E. Joyce Miller, Secretary
Vera White, Treasurer
Pierce McClellon, Councilperson

Iowa Tribe of Oklahoma
405/547-2402 • P. O. Box 190 • West Freeman Avenue
Perkins, Oklahoma 74059

May 24, 1984

RECEIVED JUN 04 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510

Attention: Mr. Pete Taylor

Dear Mr. Taylor:

RE: Statement to Senate Select Committee on Behalf of the Iowa Tribe of Oklahoma Regarding the Indian Child Welfare Act

The Iowa Tribe of Oklahoma wishes to have entered into the Senate record a statement of certain items which we consider rather serious deficiencies in the Indian Child Welfare Act.

BACKGROUND

The Iowa Tribe of Oklahoma currently consists of some 279 members and is the smallest tribe in the Shawnee, Oklahoma, area. Of this population, about 60 or approximately 20% are minors. At the time of termination of our Child Welfare Act program 5 children, or almost 10% of the juvenile population, was in custody adjudication in various state and CFR courts.

Upon notification of program termination, the tribe requested the BIA agency social services officer (who was also the agency project officer for the Indian Child Welfare Act program) to provide representation for the children in litigation. The response was: "That is not my concern and you (the tribe) will have to make your own arrangements." At this point, these children were immediately without representation or the protection the Act was intended to provide since the tribe does not have independent resources. Subsequently, the following disposition has been made with respect to these children.

C.P., female, age 2 years - Parental rights of both parents were terminated November 1983, five (5) months after program closure, and custody remained with the tribe. In February of 1984, the foster parents filed for adoption and the final hearing should be held sometime in August. Home studies, court appearances, travel, and other required effort has been provided on a voluntary basis by the former caseworker at their own expense to ensure this case is brought to a reasonable conclusion.

E.M., male, age 8 - This youngster has been in foster care since infancy, and a great deal of confusion with regard to jurisdiction has surrounded his case. At first, the Pawnee Tribe assumed jurisdiction; however, they determined the child did not meet tribal membership requirements. The Otoe-Missouria Tribe next accepted jurisdiction; they also determined the child did not meet tribal membership requirements. Here the record becomes a little hazy in that a CFR court minute order indicates a meeting was held with Iowa and Otoe tribal officials and BIA personnel. At this meeting it was agreed the BIA would handle the matter since the Iowa Tribe had no Child Welfare program at that time...here the record ends.

The Otoe-Missouria Tribe has generously provided representation in this matter since closure of the Iowa program in June of 1983. Unfortunately, because of the press of client caseload, it has been necessary to move this child at least twice and he has not been placed within the Iowa territory but, in one instance, as far away as Lawton...over 100 miles from the country and people he has known all his life.

The other three (3) children, all girls, have been placed in different foster homes since program termination. Not all these homes are in near proximity to one another nor are they within Iowa territory. This is particularly unfortunate since these children are related and had previously been placed in the same household.

PROBLEM STATEMENT

Bureau personnel need to be impressed with the intent of the Indian Child Welfare Act and their responsibility in its application. In the fall of 1982 in a meeting between Bureau personnel and Iowa tribal personnel, the area social services officer repeatedly stated that the BIA did not "have to give" funds to the tribe for the program and that it was not a 93-638 program. The tone was generally coercine in nature. As noted above, the agency then refused to provide necessary support when the program was not funded...the refusal coming from a social services program officer whose annual income is more than the total budget requested by the Iowa Tribe.

Bureau personnel reviewing applications and proposals need to be provided with orientation in the Indian Child Welfare Act and proposal evaluation. A comment made by the review team indicated a goal stated in the proposal was "too vague". Ironically, the goal so criticized was not a tribally developed one, but a goal restated verbation from the BIA specifications to assist the reviewer in understanding the priority level (assigned by the BIA) for which objectives were developed. A second comment in response to an objective for data gathering was that this particular information should have been available since the program had been in operation for over two years. Unfortunately, the data-gathering was based on a facility which was not even built yet (it was completed in the summer of 1984). Although this was explained in the text, the review team failed to recognize the time-frame as a governing factor. An appeal was filed; however, the Bureau response was not one of problem solving but of assuring all and sundry that the program termination was not their fault.

Bureau personnel and personnel reviewing applications and proposals need to be more aware of realistic operational costs. Some years ago, Harvard business school used the rule of thumb that for any project utilizing one professional and necessary clerical support, the minimum beginning budget figure for operations is $70,000 per annum. Certainly the Iowa Tribe does not maintain that $70,000 a year should be the minimum budget, but there needs to be recognition on the part of BIA personnel that tribal social service committment should not mean poverty level income utilizing donated facilities. Additionally, there needs to be a real awareness of the true level of effort required by tribal Child Welfare workers. These workers must maintain a high level of competency for they are required not only to provide the counseling and assistance of the average social worker but frequently must also: of protection or representation is reflected in the cold fact that Iowa children have been scattered to the winds since program cancellation and the tribe is powerless to assist or protect them. Further, because of the specialized knowledge and broad capabilities required, even if funds were available today, the tribe would essentially be required to build a new program from day zero!

SUMMARY

Based on tribal experience with the Indian Child Welfare Act, the Iowa Tribe of Oklahoma feels the following to be of significant importance for Congressional consideration:

1. Defining the budgeting structure to ensure that even the smallest tribes receive sufficient funding to meet clearly identified needs.

2. Initiate a requirement for orientation of federal personnel to assure a clear understanding of the intent and purpose of the Act when allocating program funds and reviewing proposals and applications. Perhaps a reallocation to 93-638 would be appropriate to ensure that even small tribes have the capability of contracting to meet their needs.

3. An alternative method of providing support services for children in litigation (as is required by 93-638) wherein the BIA would be required to administer the caseload for any tribe defunded thereby ensuring no child is left unprotected as ours has been.

Respectfully,

Wallace Murray

Wallace Murray
Chairman
Iowa Tribe of Oklahoma

JEMEZ-COCHITI-SANTA ANA-SANDIA-ZIA

FIVE SANDOVAL INDIAN PUEBLOS, INC.

TESTIMONY ON
PUBLIC LAW 95-608
THE INDIAN CHILD WELFARE ACT OF 1978
PRESENTED TO THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON OVERSIGHT HEARINGS ON IMPLEMENTATION OF THE
INDIAN CHILD WELFARE ACT
BY
RAMUS SUINA, CHAIRMAN
FIVE SANDOVAL INDIAN PUEBLOS, INC.

Mr. Chairman and Members of the Committee, my name is Ramus Suina. I am the Chairman of the Governing Board of the Five Sandoval Indian Pueblos. Our consortium is a not-for profit corporation organized for benevolent, charitable, community welfare and scientific purposes. Our mission is to promote the common welfare of our tribal members whereby improving the quality of life on our reservations. Five Sandoval Indian Pueblos does foster the social and economic advantage of the five Pueblos to preserve and protect inherent rights of self-government, land and water; to foster and encourage the assumption of increasing civic responsibilities by the five tribes. Further purpose is to help ameliorate the social and economic plight of our Pueblo people.

Five Sandoval Indian Pueblos (FSIP) has a twelve member governing board comprised of the five Governors and representatives of all five Pueblos. The consortium represents five Pueblos; the Pueblos of Jemez, Zia, Santa Ana, Cochiti and Sandia. Our reservations are located in central New Mexico within Sandoval County. The combined tribal population is 5,000 Pueblos and approximately 900 family units.

(505) 867-3351 P. O. Box 580 Bernalillo, New Mexico 87004

Among the social service programs that our consortium administers is the Title II, Indian Child Welfare Act, Family Services Program. Our program has been in operation for three years. During the past three years, this program has experienced great growth from a planning grant in its first year to nearly two years of day care development and operation. This day care program was specifically designed as a tribal family program to support and help maintain family life on our reservations. It provides day care with an emphasis on family stablilty to help reduce stress and breakup thus enabling our families to lead productive family lives. Currently, we operate three day care centers in the Pueblos of Jemez, Zia and Santa Ana and soon in Sandia. Our grant provides technical assistance to the Pueblo of Cochiti with the intent to provide new programs for families based upon the desires of the tribe.

We wish to thank the committee for allowing our organization the opportunity to submit our successes, problems and recommendations on the implementation of the Indian Child Welfare Act for Congressional Record. It is the express purpose of this act to provide support to tribal groups for the operation and improvement of child welfare services and programs.

One overwhelming need we would like to express is the need of increased funding for the Indian Child Welfare Act. It is our recommendation that this level of funding be increased to 15 million. The current 1983-84 level of 9.5 million was inadequate for tribes to operate child welfare and family service programs. In this area of funding, it would be wise for Congress to reevaluate the current funding of year to year and consider the implementation of three-year funding cycles. This lends to critical situations of "just getting started" when funding may cease. This also handicaps future growth and program development.

Other critical needs of ICWA, Title II Programs is the need of stable funding needed to improve and maintain these tribally-administered family programs. I believe this to be imperative for the tribes to accept current and greater responsibilities for those families in need of support and services. Only with this monetary support can tribal groups meet the full intent of the act. It is never known from one year to another what funding levels that we are eligible for. Each year we review with our tribes whether it would offer more advantage to separate and compete or remain as a consortium. We are always faced with eternal funding issues of small tribal population and great need versus large tribal population and even greater needs.

It is our understanding that the Bureau of Indian Affairs is currently considering the absorption of ICWA funds into the Social Service program funds. We wish to make this recommendation to Congress to maintain the separation of ICWA, Title II grant program from Indian Services (Social Services) of general assistance, substitute care reimbursements and the Tribal Work Experience Programs. This is an absolute necessity. The programs authorized under ICWA are young in age and need more maturity before any gains, that we as tribes have made will become evident. If this absorption is allowed, neither Congress or tribes will be able_to gauge accurate implementation of ICWA.

We offer the following outline of problemmatic areas of implementation:

A. The funding process includes the submittal of competitive proposal grant applications. The request for proposals poses undue burdens and marginal success factors for the Rio Grande Pueblos. This RFP always comes in December with submittal date of mid-January. Our traditional Pueblos are realizing tribal leadership changes at that time. New Governors are inaugurated in the first few weeks of January, thus making program changes and development with its needed resolution extremely hard to receive. The Southern Pueblos Agency (BIA) has acknowledged this critical time factor and did advocate to Area Office the need of this change on our behalf.

B. There is great risk and handicaps for smaller or less sophisticated tribes who do not have in their employ expert grant writers. Since this is a competitive grant process, the proposal means all for new potential grantees and to ongoing grantees.

C. There is no standard for the review process and or selection of the Evaluation Review Teams. Reviewers are not necessarily trained or knowledgeable about child welfare matters. Reviewers are not trained to conduct objective evaluations. The use of competing tribal program staff as reviewers is a controversial issue. Not only are competing program staff used as reviewers of the competitive proposals, but in our Albuquerque Area as the program evaluators for ongoing Title II grant programs. For ongoing programs this review must be done before the competitive proposal is submitted and be satisfactory.

D. There is currently no mechanism for Bureau of Indian Affairs or tribes to determine if state courts are monitored to insure compliance with P.L. 95-608. In New Mexico since we are unable to monitor state courts, we have seen the abuse of independent adoptions of Indian children. Although our children have not been affected from this abuse, the potential does exist for this to happen to our Pueblo children. The independent adoption of any Indian child must be recorded and tribe or tribes of that child must be notified. Private, religious and charitable independent adoption agencies must be licensed and controlled by the state government. Currently in New Mexico, some of these groups are not licensed or given waivers.

E. Another problemmatic issue which needs resolving is the need to clarify roles of the Public Health, Indian Health Social Workers with regard to foster care and adoptions. It is our observation that this group of social workers are doing a good job in seeking advice from tribal groups and working with state human service agencies. They need to be brought into the fold of those of us working in Indian child welfare issues. For lack of formal invitation, they have begun to hold their own meetings with tribes to seek advice and provide information on children in need of child welfare services.

One concern we have as tribal groups is that of mutual assistance since this program implementation mandates a triad of responsibilities that of the federal government through the Dept. of the Interior, Bureau of Indian Affairs, state governments and tribes. For successful implementation, this must be achieved and maintained. Currently this is a "hit or miss" situation. The variance of these relationships is great considering the different relationships of tribes to the state governments. In New Mexico, it has taken four years of operation to finally see the fruits of years of advocacy and fostering this relationship. In 1981 our organization held the first of formal meetings of all three partners, federal, state and tribal representatives for the first N.M. Indian Child Welfare Conference in Albuquerque, New Mexico. It is a limited success. This was the beginning of our efforts to eliminate the historical barrier between tribes and the state. That conference hosted approximately 100 people. To date we have held several meetings of this group on various issues but most pressing is the issue of the independent adoptions.

In closing, Mr. Chairman, it is only fitting to list the positives of this act and its authorized programs. Our state through its state employees and tribal representatives have made progress. Increased number and frequency of meetings are being held and better relationships have evolved between the state and tribes on child welfare issues. It is heartening to feel that the United States Congress feels the same importance to protect our Indian children and families. Through this act we are experiencing the growth of developing the capabilities to make child welfare decision for ourselves. Thank you.

KAWERAK, INC.
P.O. BOX 948 • NOME, ALASKA 99762
(907) 443-5231

RECEIVED MAY 21 1984

SERVING THE VILLAGES OF:

BREVIG MISSION
COUNCIL
DIOMEDE
ELIM
GAMBELL
GOLOVIN
KOYUK
NOME
SAVOONGA
SHAKTOOLIK
SHISHMAREF
SOLOMON
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

May 18, 1984

Select Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510

Attention: Senator Mark Andrews, Chairman

Dear Senator Andrews and Committee Members:

This letter will serve as written testimony on the implementation of the Indian Child Welfare Act that your Committee is presently soliciting.

This testimony will address three areas of concern:

1. Provisions of the Indian Child Welfare Act
2. State of Alaska jurisdiction
3. Funding

1. PROVISIONS of the Indian Child Welfare Act

This Act does not apply to placement of custody of children in divorce proceedings. One major problem we face in this region (encompassing 19 villages) is that the State court has interpreted this exception clause as applying also in custody disputes between parents who are not married. This interpretation by the State court has presented a serious obstacle in the ability of tribal governments to intervene in this type of case.

This Act applies in involuntary proceedings where the legal custodian of the Indian child does not consent to the child being removed from his/her care. The State courts have therefore concluded that the Act does not apply in cases where the parent(s) have voluntarily terminated their parental rights. The State Social Services therefore encourage voluntary termination of parental rights. In this way, they assert that such cases are not subject to the provisions of the Act. This is a serious problem that concerns all of the tribal governments of this region because the effect of this action is that our Alaska Native children are often then placed in non-Native homes which according to State law, they assert, is legal. This is a violation of the spirit of the Act which is intended to keep Indian children in Indian homes.

2. JURISDICTION of the State of Alaska

In the absence of tribal courts, the State of Alaska court system claims jurisdiction to hear custody cases involving Alaska Native children pursuant to P.L. 280. A multitude of problems exist within this judicial arrangement. One is the difficulty of securing cooperative agreements between tribes and State courts to define jurisdiction that is acceptable to both entities. The State generally interprets P.L. 280 as having granted the State civil and criminal jurisdiction over Alaska Natives forever. Tribal governments assert their right to claim concurrent jurisdiction over any matters that affect their membership. Therefore, at this point the relationship between tribes and the State is more adversarial than cooperative in the area of child welfare.

In addition, even in P.L. 280 states, tribal laws and customs are to be given full force and effect in determining child welfare and other civil cases involving Alaska Natives. It is the position of the tribal governments that P.L. 280 in no way diminished or terminated their governing powers. Tribal jurisdictional powers are derived from the inherent sovereignty of American Indian and Alaska Native tribes. State officials and judges, as well as Secretary of Interior Clark, clearly need to be oriented to this basic fact of tribal political status. Full recognition of this political status would result in a more sincere effort to carry out the intent of the Indian Child Welfare Act.

3. FUNDING

Insufficient funding for ICWA Title II grant applicants continues to be a problem for Alaska Native tribes. There are over 200 Alaskan villages that are federally recognized, compared to the 280 federally recognized tribal groups in the Lower 48. However, of the $8.7 million appropriated for FY 1984 for this program, only $736,000 was allocated to Alaska or 8.8% of available funding for all tribes. Of this amount, 10% was held back by the Juneau Area Office for "appeals", so in reality only 7.6% ($662,000) was available for Alaskan tribal groups. Of approximately 200 tribal groups, only eight (8) were awarded grants for this program for FY 1984. Clearly, therefore, there is a funding problem. Sufficient appropriation of funds for the Act is absolutely essential for honoring a promise written into law.

Alaska Native tribes cannot achieve true self-determination by continuing to rely on other governments to make decisions affecting their membership. Hence, there is a growing interest statewide in establishing more tribal courts and Indian Child Welfare programs to help build tribal capacity in the child welfare and other areas.

The Department of Interior must actively execute its responsibilities under the Indian Child Welfare Act and under the Indian Reorganization Act. Funds must be released as needed to pay for counsel for indigent parents and for tribes where such assistance is not available elsewhere. In addition, the Secretary should act promptly when petitioned by tribes to reassume jurisdiction in P.L. 280 states. Finally, the Secretary should research the political status of Indian tribes and immediately cease the dangerous practice of allowing the state of Alaska to interfere in activities that involve only the tribes and the federal government. The incident with the Eagle constitution speaks to the current policy of the Department of Interior towards Alaska Native tribes. We respectfully request a change in this policy to re-establish the government to government political relationship between the federal government and tribes. This would strengthen the ability of tribes to utilize the protections of the Indian Child Welfare Act.

The state of Alaska must work with the tribes in a good faith effort to implement the Act. The state must comply with its obligation to notify the tribes of all proceedings involving Alaska Native children. Tribal/state agreements must be developed in more areas of the state.

The tribal governments must continue to strive to establish judicial systems which are capable of accommodating child welfare matters and to develop codes and organizational structures which enable them to exercise their authority under the Act. In order to accomplish these ambitious goals, tribes need funding to implement the provisions of the Act. Congress, in passing this Act, expressed its clear preference for "keeping Indian children with their families, deferring to tribal judgment on matters concerning the custody of tribal children, and placing Indian children who must be removed from their homes within their own families or Indian tribes." Tribal governments wholeheartedly endorse this policy but once again, we respectfully request that the Department of Interior take whatever action is necessary to carry out this policy, rather than hindering it with poor funding levels and regulations that minimize rather than maximize tribal involvement. In addition, Congress should amend the Act to place stricter mandates on the state to carry out this Act in the courts until more tribal courts are established.

Our tribes consider our children to be our most precious resource. We are striving to protect and preserve that resource by keeping our children in their own homelands to grow up with a strong tribal identity. Ideally, this Indian Child Welfare Act provides statutory support for our effort. We take this Act seriously and we suggest that the authors of the Indian Child Welfare Act endorse our efforts through supportive regulations and funding levels.

Respectfully,

KAWERAK, INC.

Mary Miller

Mary Miller
Tribal Operations &
Rights Protection
Officer

cc: IRA and Traditional Councils:

Unalakleet
Stebbins
Gambell
Savoonga
Elim
Golovin
Shishmaref
Elim
Wales
White Mountain
St. Michael
Shaktoolik
Koyuk
Teller
Mary's Igloo
Brevi Mission
Solomon
Diomede
King Island
Nome

Alaska Congressional Delegation
Association on American Indian Affairs, Inc.
United Tribes of Alaska
Alaska Federation of Natives

Kiowa Tribe of Oklahoma

POSTAL BOX 369 • CARNEGIE, OKLAHOMA 73015 • 405/654-2300

RECEIVED MAY 30 1984

May 24, 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Re: Testimony Regarding Experience with the ICWA.

Attention: Pete Taylor

Dear Mr. Andrews:

In the ICWA Title II BIA Grant, I see no problem with the ICWA. All active cases in Southwest Oklahoma are usually handled by Kiowa Child Welfare Protective Services. At times, we are offered cases the state cannot handled. Usually, if we cannot handled the cases, the child welfare services dispose's the case and it is send back to the state because, they have all the resouces.

In the Title Vi-(b) direct funding grant, the people of the state match federal funding and the tribes get what's left over and then the federal region VI request match funding. In the long run, the tribes match twice, because we live within the state.

Other than these two problems, the problems may be ironed out when the Kiowa Tribe negociate agreement with the state. If you have any questions, please notify and contact this number at (405)654-2300, extention 232.

Sincerely,

Julia Roubideaux

Julia Roubideaux,
Kiowa Child Welfare Program Specialist

JR/jr

STATEMENT OF THE LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS CONCERNING IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT OF 1978, AT A HEARING OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

The reservation of the Lac Courte Oreilles Band is located in northwestern Wisconsin, a State subject to the provisions of P.L. 83-280. The Tribe was the first to avail itself of the opportunity provided by section 108 of the Indian Child Welfare Act to reassume jurisdiction over child custody proceedings. As of February 20, 1981, the Tribe has exercised exclusive jurisdiction over such proceedings concerning Indian children found on its Reservation. Since that date, the Tribe's experience with the provisions of the ICWA are more similar to those of Tribes in non-280 States, but have been complicated by the special burdens borne by Tribes in 280 States. This statement will address initially the result of reassumption of jurisdiction, and then will discuss the matters of ICWA implementation shared with all other Tribes.

P.L. 280

The effect of P.L. 280 on the Tribe subject to its provisions is the atrophy of tribal institutions, especially tribal courts. By reassuming exclusive jurisdiction over child custody proceedings, the Lac Courte Oreilles Band found itself with a court system which was not eligible for funding by the Bureau of Indian Affairs. (BIA law and order funds are limited to non-280 tribes, and Title I of the ICWA has never been funded by Congress) It is clear to the Tribe that other Tribes will not be able to reassume exclusive jurisdiction under section 108 unless there exists funding for the functioning of tribal courts; very few tribes have the financial ability to fund tribal courts without assistance. It is also clear that ability of a tribal court to function effectively is an absolute predicate to implementation of tribal control of its children through Title I of the ICWA. Funding for tribal courts in P.L. 280 States should be made available by the Congress.

Title I

The difficulties with full implementation of the ICWA, in terms of adequate funding of tribal courts, is not limited to P.L. 280 situations. Transfer of proceedings from State to Tribal Courts, under section 101(b) of the Act, is more often than not predicated upon the willingness of the Tribal Court to hear the case in the area of the transferring State Court. The ability of a Tribal Court to hear such cases is limited by available finances; for the Lac Courte Oreilles Tribal Court, this means that only one of the five cases for which transfer was requested by the Tribe was actually transferred, for the Court had funds only for one such case. There must be a recognition that transferred cases may require transportation, lodging, and per diem expenses for the tribal judge and clerk. Without such a provision, cases will not be transferred by State Court judges, who are concerned about the inconvenience of witness and social service department staff travel to a remote reservation for a child custody proceeding; this situation results in a finding of forum non conveniens for Indian child custody proceedings .

It is the further experience of the Lac Courte Oreilles Band that most State Court judges are unwilling to grant the Tribe's request for transfer of proceedings under section 101(b) of the Act, upon the Tribe's written petition solely. The judges deny the petitions unless a personal appearance is made in their courtroom by the Tribe. Again, no funding is available to assist Tribes in covering the costs of travel, lodging, and per diem for tribal representatives who appear in State Courts. The result is that the Lac Courte Oreilles Band has the financial wherewithal to personally appear at a transfer hearing in one case each fiscal year. It necessitates picking one case which the Tribe will pursue, to the detriment of other Indian children's cases.

In all fairness, personal appearance before a State Court by the Tribe would not guarantee transfer of the proceedings to the Tribal Court, even without the objection of the child's parents. This is due to the interpretation accorded the "good cause" exception to transfer by State Courts. Good cause has been found not to transfer the proceedings in one case in Illinois due to the fact that the Tribe did not request transfer in person earlier.

If Tribes are only able to exercise their right to intervene in State Court proceedings under section 101(c) of the Act, the financial costs of intervention are not an allowable cost from any BIA funding source. Again, the Tribe must carefully assess its caseload in order to determine which cases, if any, it can afford to become involved in the proceedings. Intervention, even if granted, has proven not to be adequate to ensure State Court compliance with the Act, particularly in adoptive placements. Two State Courts have followed Illinois placement preferences, rather than those contained in section 105(a) of the ICWA, through interpretation of the "good cause" exception of that section. In their view, good cause not to follow the placement preferences exists when an Indian child is the subject of a petition for adoption brought by the foster parents who have had the child in their care for more than one year.

In summary, Title I of the Indian Child Welfare Act requires an annual appropriation by Congress in order to ensure that tribal protection of its children is more than a promise, but a reality. Changes in the legislation are also in order to ensure that State Courts do more than honor the letter of the legislation.

Title II

The funding level for Title II is totally inadequate. Tribes must compete with each other and with Indian organizations for available funds, with the result that not all Tribes receive any financial support for the social service obligations mandated by Title I of the Act. The Tribes which do receive funding, such as Lac Courte Oreilles, have barely enough to do more than crisis intervention with one social worker/ child welfare advocate. There exists no funds for the following:

* Foster care placement--all placements by Tribal Court must be with the understanding that the custodian is eligible for some financial assistance; the only one available is AFDC. The

lack of foster care funds also is a factor that the Tribe must take into account in determining whether to request transfer of the child custody proceedings to Tribal Court--i.e., whether or not the child has family members with whom he/she can be placed by the Tribal Court.

* Residential treatment care--no funding exists for the care of minors with special needs which cannot be met by foster care level placements. Those minors eligible for medical assistance are the only ones for whom the Tribal Court can place with the assurance that funding exists for the needed care.

* Preventive programs--day care, drop-in centers, chemical dependency counseling, family planning and counseling services are simply not available, other than to the extent that such programs are provided by other agencies. The Tribe has not received funds from other programs, such IHS, which cover the range of services needed by an effective Child Welfare Program.

In summary, Title II now serves as a wish list for Tribes, but will never be more than that unless or until Congress sees fit to provide the financial means for Tribes to do more than ensure adequate emergency care for its minor children.

DARRELL WADENA, PRESIDENT
NORMAN DESCHAMPE, VICE PRESIDENT

GEORGE V. GOODWIN, EXECUTIVE DIRECTOR
KENT P. TUPPER, LEGAL COUNSEL

DANIEL MORRISON, SECRETARY
HARTLEY WHITE, TREASURER

The Minnesota Chippewa Tribe
P.O. BOX 217 — CASS LAKE, MINNESOTA 56633 335-2252

RECEIVED MAY 30 1984

May 22, 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510

Attention: Pete Taylor

Dear Senator Andrews:

Please consider this testimony for your oversight hearings on the Indian Child Welfare Act of 1978.

The Minnesota Chippewa Tribe is comprised of six (6) member reservations, White Earth, Leech Lake, Bois Forte (Nett Lake), Grand Portage, Mille Lacs and Fond du Lac. Our enrollment is approximately 34,000 members.

We have been involved with the Indian Child Welfare Act since 1977. We presented testimony in March, 1978. We have worked closely with Minnesota in its implementation throughout the state.

Social Services was being delivered by our tribal government prior to the enactment of the ICWA. We developed foster home standards late in 1978. In January 1980, the Minnesota Chippewa Tribe became the first tribe in the nation to sign an agreement with a state under the ICWA. The agreement permits state courts to handle Indian child welfare matters until we develop a court system. Each reservation has its own Social Service Division that delivers direct services. We handle cases such as abuse (all kinds), neglect, foster placements and adoptions. The tribal staff work with county staff on the cases mentioned above. Foster homes are licensed by the reservations. The Minnesota Chippewa Tribe has recently employed a worker in the metropolitan area to provide assistance for families in that area.

Our experience with the ICWA for the most part has been positive. It has created a mechanism for tribes to become involved with their people at a critical moment, when they are about to lose their children.

There are parts to the Act that need further attention:

1) Voluntary placements;
2) Final decrees for adoption; and
3) Title II, the funding process.

We have had many of our members ask for assistance to get their children back from the county. The majority of the time, the cases are from the large metropolitan areas in Minnesota and are voluntary placements. We advise the client to "demand" their children back. Usually they have already tried that only to be taken into court and to have the placement of their children made involuntary. We can become involved then, but the point is some county Social Workers are intimidating Indian people into voluntary placements, so they do not have to go to court and notify the Tribe. By the time we get involved, (if it is administratively possible) and build a case for the return of the children, the children will have been out of the home 1 - 3 years. Voluntary placements need a clearer definition or perhaps, notice sent to the Tribes.

The ICWA requires state courts entering a final adoption decree to send a copy to the Secretary, Section 301 (a). This serves no real purpose. An Indian child could go through the entire process of adoption, without the involvement or knowledge of the Tribe. Although the adoption would not be legal, who would know? Even if the state court sends a copy of the final decree to the Secretary it would make no difference. A simple process of sending a copy of the final decree to Tribes would insure a back checking system. We would be able to check our records for compliance under Section 101, 102, and 105.

The funding process under the Bureau of Indian Affairs is unnecessary, clumsy, and frankly, ill conceived. From the very beginning the Department of the Interior has made terrible attempts to fund the Act. Rather than going to Congress and justifying monies for the ICWA, the BIA merely shifted contract monies from tribal Social Services to the ICWA budget line item. That didn't make a great deal of sense, especially when 30% of the ICWA monies went to urban programs with no tribal affiliations. At this point there is nothing Congress can do to correct that problem, except be aware of the inappropriate beginning the BIA gave the ICWA funding.

As far as the process, you can do something about that, and if anything changes from your oversight hearings we ardently hope it is this. Tribes are going to be here for a long time to come, the ICWA will be here for a long time to come, we hope the funding will be too, WHY is the funding process competive and from year to year?!?! The ICWA monies should flow to tribes the same as contract monies do each year. Social Services are a necessary part of any government and should be funded continuously. There would be a minimum of paper work and more long range planning could be accomplished. For tribal government to submit a full blown proposal every year, to be submitted through an unnecessary evaluation process, undermines the credibility of tribal government and their desires for self-determination. Needless to say, it takes countless hours of tribal staff's time to prepare a "competitive" proposal. It further takes many hours of BIA employees to handle the proposals, read them, evaluate them, and then to fund the "good ones". We all know a good proposal does not necessarily constitute a good program. The BIA should spend their time determining a good program from a bad one.

The funding of Urban Programs further complicates the monies of the ICWA. The competitive process encourages antagonism between urban organizations and tribes. It seems as though the BIA has done that deliberately. Urban organizations have come to us requesting letters of support for their programs. Somehow, the BIA does not feel the support of a tribal government is significant, because they have consistantly funded urban organizations that do not have tribal support. In FY 1984, the BIA funded an urban organization that is located within the service area of one of our reservations. That reservation also has an ICWA program, the urban program was funded without the support or knowledge of the reservation.

It has never made sense that urban organizations receive funding under the ICWA when they have absolutely no power under the Act.

If urban organizations are to receive funds under the ICWA, there needs to be much more involvement from tribal government in determining which organization gets funded. Perhaps, it could go as far as to give the money to the tribes and let them decide whether or not they even need an urban organization to help them. There is no reason why a tribe cannot set up its own office in urban areas to implement the ICWA if the funds were provided to do that.

Please do not take this part of the testimony as an attack on the urban organizations, but instead it is directed at the funding process. There are many urban organizations that have impeccable reputations.

If you have any questions, please do not hesitate to contact myself, George V. Goodwin, Executive Director or Bob Aitken, Director, Human Services Division.

Sincerely,

THE MINNESOTA CHIPPEWA TRIBE

Darrell Wadena

Darrell Wadena
President

NATIVE AMERICAN
COALITION OF TULSA, INC.
P.O. Box 2648 Tulsa, Oklahoma 74101
1740 West 41 Street Tulsa, Oklahoma 74107

March 20, 1984

RECEIVED MAR 2 6 1984

RECEIVED MAR 2 6 1984

Senator Mark Andrews
724 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Andrews :

This letter is to urge your support for an additional appropriation level for the Indian Child Welfare Act funding of at least $2 million dollars for fiscal year 1985 for Title II funding over that requested by the current Administration.

The Indian Child Welfare Act was passed by Congress to prevent the removal of Indian children from their families and cultural environment. In the past, one in five children were removed from their families and were placed in the non-Indian environment. The Indian Child Welfare Act allows the tribe to establish a welfare system for their minor tribal members. The Act further provides for funds to the tribes to assist with the establishing of court systems; development of children's codes; provided vital and necessary social services such as counseling, parenting skills, foster care standards, adoption and recruitment of foster care families; and many, many other needed services for tribal members.

The Bureau of Indian Affairs is proposing to eliminate the funding of off-reservation Indian organization programs for fiscal year 1985 appropriations in Title II of the Indian Child Welfare Act. The budget proposed is $7.7 million dollars. This reflects a decrease of $1 million dollars from fiscal year 1984. The $1 million dollar reduction assumes termination of off-reservation Indian Child Welfare Act Programs.

The Act does not limit authority to funding to reservation status Indians. The Urban Indian organizations act on behalf of tribes on child custody matters when their tribal members move to urban areas. Mere location should not determine if the Indian tribal member is to be granted the protection and legal rights which the law was established to provide. In addition, the urban programs offer services to assist the Indian family to meet court requirements to get legal custody of their children returned to them.

Please provide your continued support for the Indian Child Welfare Act and support the $1 million dollar increase for fiscal year 1985 funds and in addition please continue to support off reservation Indian Child Welfare Act programs.

Sincerely,

Ethel C. Krepps
Ethel C. Krepps
ICWA Attorney/Project Manager

"To Unite and Achieve"
"TRADITIONAL INDIANS WORKING FOR PROGRESS"

May 23, 1984

WRITTEN TESTIMONY

COMMENTS AND RECOMMENDATIONS

Submitted By

THE NATIVE AMERICAN REHABILITATION ASSOCIATION

To

THE CONGRESSIONAL OVERSIGHT COMMITTEE

On the Indian Child Welfare Act of 1978

Honorable Senator Mark Andrews and Members of the Oversight Committee:

This written document is respectfully submitted by Sidney Ann Brown, Blackfeet, Executive Director of the Native American Rehabilitation Association of Portland, Oregon, representing the concerns of the Urban Indian People and the Native American Rehabilitation Association Board of Directors. We want an increase in appropriations for the Indian Child Welfare Act Programs currently administered by the Department of Interior, Bureau of Indian Affairs.

The Native American Rehabilitation Association recognizes that there are many important concerns with the Act, some of which have been expressed. However, the emphasis of our testimony must be on the critical issue of funding. Without an adequate and reliable funding base, other changes and/or amendments to the Act will not help tribes and urban organizations provide the services that are necessary to meet the intent of the Act.

The Native American Rehabilitation Association is asking that Congress:

....Establish a funding authorization separate from the Bureau of Indian Affairs;

....Establish an authorization level of $29.5 million as recommended by the Association of American Indians and Alaskan Native Social Workers;

....Provide funding for tribes and urban programs on an entitlement basis rather than a competitive basis;

....Mandate funding to be consistent and on a three year cycle;

....Establish a method for monitoring and compliance of states and private agencies including enforcement by penalty for non-compliance;

....Establish a consistent reporting system for research, information, and entitlement purposes.

As Indian people, united on this issue of Indian Child Welfare, we present our case. We maintain that our cause was presented with overwhelming evidence and justification six years ago. This Act, without proper appropriations, is now adding to the problems evidenced six years ago, by causing manifold complications resulting from Tribes and urban programs trying to handle cases when there are not adequate social services and trained judicial systems to ensure proper care and due process for Indian children.

Our most valuable resource is our human resource...our children. Traditionally, Indian People consider our children our primary resource for providing the link between generations, the carriers of tradition and culture and for ensuring that The People continue to exist.

The Native American Rehabilitation Association is a urban private non-profit Indian-managed social service agency, incorporated under the laws of the State of Oregon, that has received national recognition as a culturally relevant Indian Alcohol Program. In the past 13 years of operation the need to attend to the problems of families at risk of losing custody of their children was identified.

The award of $50,000 from the Bureau of Indian Affairs for a Native American Rehabilitation Association Indian Child Welfare component has allowed the agency to become totally involved in the dynamics of a family eligible for Indian Child Welfare services. In FY 83-84 the Native American Rehabilitation Association was charged with serving fifteen (15) primary families (parent and children). Prior to the Indian Child Welfare award these families were always referred to outside agencies and other social service providers. When funded the Native American Rehabilitation Association restricted intake to clients identified as alcoholics with deficiencies in parenting skills and inability to assure safe environments for their affected children as the presenting problems causing the parental rights at risk.

Over a ten month period (July, 1983 - April, 1984) the Native American Rehabilitation Association served 34 parents and 64 youth utilizing Indian Child Welfare funds; 14 children were court involved, and seven of these 14 were court dependent. 47 were 8 years or less and 18 were youth (9 to 18 years of age). Referral sources included self, other Indian Child Welfare programs, Children's Services Division, family courts and tribal social services. The Native American Rehabilitation Association's unique and innovative treatment program has been identified by the Bureau of Indian Affairs as a model Indian Child Welfare program. The Native mother and children are placed in a residential treatment setting and the Native father and adolescent boys reside in the Totem Lodge residential treatment program. The entire family is treated.

Referrals began to pour in from the surrounding states, beyond the Indian Child Welfare Programs staff's ability to serve. Residential clients' waiting lists were established and the Outpatient Treatment Services were devised to meet the needs of local clientele.

Nineteen of these families were court dependence involved. Sixteen of these families served made good progress within their first 90 residential treatment days. Initially it was necessary to place four of the children in foster care. A total of twenty-one children were returned to the parent(s) as a result of treatment at NARA. An additional twenty-three children were not yet court involved and further deterioration of the family was prevented as a result of treatment. Four of the youth who entered treatment as a family member were identified as already abusing alcohol and were provided primary early intervention treatment. The other 60 children of the alcoholic received prevention education services, thus disrupting the cycle of alcoholism and child abuse/neglect in the coming generation.

The Native American Rehabilitaion Association's primary approach follows the holistic treatment mode. This approach has allowed NARA to enjoy an extremely low rate of repeat treatment (6%) and has induced many families to reunite in a healthy positive family environment. These same families many times become Native foster families and resources for others facing the same difficulties.

At the American Indian National Conference on Child Abuse and Neglect, Tulsa, Oklahoma on May 9-11, 1984, it was reported that approximately 90% of all ICW families define alcohol abuse as the primary cause of family breakup and of outside intervention and referral. Removal of Indian children from their families and culture; does not occur just on or near the reservation but in the cities also.

The Native American Rehabilitation Association has encountered several difficulties in operating under the Act and in implementation activities. They are as follows:

PROBLEM

.....The Single State Agency in charge of Children's Services is not thoroughly aware of the intent of the law and some caseworkers do no know and have not followed the procedures set forth in the Act.

.....Currently the Indian client must know about the law and establish that their children are enrolled or eligible for enrollment before it is assured that the Oregon State caseworkers involved observe the steps required to assure that Indian Children are removed and placed appropriately.

.....There appears to be passive resistance to change on the part of the courts although there has been introductory training initiated. Their failure to follow through and carry out the intent of the law has resulted in many caseworkers and judges being unfamiliar with the law and therefore, unable to carry out the procedures set forth by the law.

RECOMMENDATION

.....The recommended solution might be to stipulate that state agencies and the courts must provide information and training on the Indian Child Welfare Act in order to be in contract compliance and receive any Health and Human Service Block Grant Revenue.

PROBLEM

.....The level of funding for each Indian Child Welfare project is inappropriate and inadequate for the scope of work. Under Subchapter 11, Section 1931, a minimum of eight types of child and family service programs are listed. It should be obvious to any administrator that a basic funding level is needed to operate every component of social services whether it is two or eight.

.....Tribes and urban programs are being funded at a level that will cover one component of services under the Act, but due to grant competition, need and other factors, are actually being required to provide services from four or more components.

Example: One person alone may be required to run an Indian Child Welfare program which encompasses counseling, child protective services, para-legal services, administrative and foster home recruiting and placement, etc. Thus what occurs is the creation of an illusion that the programs have been ineffective, when actually the expected scope of work is such that only a complex service delivery system could address it.

RECOMMENDATION

.....The recommended solution would be to provide adequate funding, at an appropriate level, based on entitlement rather than size, location of the program, or competitive methods.

Is a child from a small tribe or urban area any less important or less deserving of services than a child from a large reservation?

Since the enactment of P.L. 95-608 the primary problem has been a lack of a congressional appropriation. Without adequate funding to implement and carry out its purpose the law becomes moot. Indian Child Welfare needs were gravely illustrated and overwhelming evidence was presented to Congress six year ago, hence the Act. The needs haven't changed and neither has the struggle for funds. The process for allocation of ICWA funds is based on a competitive process causing inconsistency of program continuity and lack of services for many Indian children on and off reservations. Stop-gap, band-aid levels of funding reallocated from other programs within the Bureau of Indian Affairs cannot provide enough help to the American Indian Children.

Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

Oneida Tribe of Indians of Wisconsin

Post Office Box 365

Phone: 869-2771

Oneida, WI 54155

[illegible]

Because of the help of this Oneida's Chief in cementing a friendship between the six nations and the Colony of Pennsylvania, a new nation, the United States was made possible.

May 23, 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510

ATTENTION: Pete Taylor

Dear Senator Andrews;

The administration of the Indian Child Welfare Act has been difficult from the beginning. Appropriations for the implemenation of the Act have been far from sufficient and the funding levels have been decreasing regularly. The number of Indian children in the system is increasing steadily and the Indian Child Welfare Program cannot perform the service to the individuals that is required to implement the Act.

Due to insufficient funding, there is only one staff person in our program who is just overburdoned by the ever increasing caseload.

The purpose of the Indian Child Welfare Act must be supported financially and an increase in the allocation would provide the opportunity to properly administer the Act to the extent that it was intended.

Thank you for the opportunity to present this testimony.

Sincerely,

ONEIDA TRIBE OF INDIANS OF WISCONSIN

Tony Benson

Tony Benson, Council Member
Oneida Business Committee

TB/tf

ONEIDA
COMMUNITY HEALTH CENTER
Post Office Box 365
Oneida, WI 54155

Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

UGWA DEHOLUN TATEHE

Because of the help of this Oneida Chief in cementing a friendship between the six nations and the Colony of Pennsylvania, a new nation, the United States was made possible.

414-869-2711

RECEIVED MAY 25 1984

May 23, 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510

Attention: Pete Taylor

Dear Senator Andrews:

I am writing this letter with regards to the Indian Child Welfare Act (P.L. 95-608).

Presently I am the Coordinator for the Indian Child Welfare Program for the Oneida Tribe of Indians of Wisconsin.
First of all I would like to acknowledge the primary purpose and intent of the Indian Child Welfare Act. Many people know of the existance of the ICWA but few (besides the Tribes themselves) are able to conceive the intent. The ICWA was originally brought forth due to the number of Indian children being arbitrarily removed from their families and communities. The ICWA surfaced due to the experiences and consequences of the experiences of those children who were removed from their families. Consequences being alcoholism, family dysfunction, domestic violence, emotional, psychological, and physical damage, behaviors of child abuse and child neglect, incest, early teenage pregnancies, confusion, identity problems and suicide. Most important the ICWA protects what is considered to be the most prized possession, the Indian family unit and Indian children.

After the many years of ego, cultural and self-esteem destruction which has been placed on Indian people by the dominant society, the ICWA is only one step of re-establishing and building families, and the pride of being Indian.

Patterns of Indian families can be very strong and positive. The influence and interactions of the elderly, of aunts, uncles, other extended family and community is beneficial in terms of support, guidance, confidence and role models. Through the years of cultural deprivation many Indian people have lost sight of the positive effects of extended family. Although sight has been lost Indian people can once again start using these basic family tools.

As a Coordinator of the Indian Child Welfare Act in my community I still see attempts to place Indian children in non-Indian foster homes. I see state and county people talking of the act as a problem rather than in a positive nature. I see Indian children still being adopted into non-Indian homes. I see no centralized recordkeeping for Indian adoptions. I also talk with and see the social problems, the confusion and the sense of no-identity of adults who as children were adopted out to non-Indian homes. These people search for some identity of what being Indian means; an answer they may never come to understand or find. One learns cultural values as he is being raised by extended family members and living within the community. There are non-Indian families who have adopted Indian children and have treated them as non-equals, who have never allowed them to explore their culture and who know nothing of Indian people. Yes, these situations still exist.

With the ICWA they do not occur quite as often as before. Our tribe does not license our own foster homes, but the counties have licensed some Indian homes for the use of placing Indian children. You see the ICWA needs to grow and become stronger rather than diminish. With the ultimate goal of preventing as well as stopping arbitrary removal of Indian children from their homes, establishing strong family ties and to prevent the major social problems that occur as a result of removal from one's culture. It took generations and generations to breakdown the family structures of Indian families and it is impossible to rebuild those years of oppression in six (6) years.

One of the main problems we are faced with at this point is the cutbacks in funding. At present the population of Oneida is 4,393 (1983 population estimate) with 1,577 children under 18 (1983 population estimate). I have a caseload at present of 75 children and families. There exists one Indian Child Welfare worker, which is myself. The caseload of 75 includes cases of which are presently being worked on and cases which are in need of follow-up.

With such a large caseload and the responsibilities; one must question the quality of time allocated for clients and the quality of follow-up.

It has always been, and still is, considered that the children are the most prized existence of an Indian community. I feel that the Indian Child Welfare Act is at this time beginning to make the positive impact on Indian families and Indian communities, that seems so natural for Indian people.

Indian Tribes are still in the process of developing systems for foster homes, adoptions and developing a system (once again) to have Indian people help themselves. Rather than considering defunding the programs, I ask that with your hearts look at our requests to increase if not maintain present funding. I could continue on with more testimony but I have a number of investigations to complete and home visits to make. But I ask that as you read or hear this you listen for the words that are between the lines.

Respectfully submitted,

Kathleen E. King

Kathleen E. King, Coordinator
Oneida Indian Child Welfare Program
ONEIDA COMMUNITY HEALTH CENTER

KEK/dct

Oneida Tribe of Indians of Wisconsin
P.O. Box 365
Oneida, WI 54155

Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

Oneida Tribe of Indians of Wisconsin

Post Office Box 365

Phone: 869-2771

Oneida, WI 54155

[illegible]

Because of the help of this Oneida Chief in cementing a friendship between the six nations and the Colony of Pennsylvania, a new nation, the United States was made possible.

RECEIVED [illegible] 30 1984

May 21, 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510
Att: Pete Taylor

Dear Mr. Andrews/Taylor:

I am writing this letter in behalf of the Indian Child Welfare Act. for testimony.

I presently sit on the Indian Child Welfare Act Board in Oneida Wisconsin. I am presently in charge of a Indian foster child. I have an adopted son who is half Winnebago and half Oneida. I am an enrolled Oneida member of the Oneida Tribe of Indians of Wisconsin.

The act has given Indian people the opportuntiy to step in and determine the future of their own. The act gives Indian people an initive to appeal and a standing stone to fight decisons they may not have before had they not the feeling someone was backing them and their children up.

Finally, our Indian children belong to us and no non-Indian has the right to make those decision for us.

Sincerely,

Debra Powless

Debra Powless,
Oneida Child Protective Board

Pyramid Lake Paiute Tribal Council
Post Office Box 256
Nixon, Nevada 89424
Telephone: (702) Nixon No. 3

May 15, 1984
RECEIVED MAY 21 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Attention: Pete Taylor

Dear Senator Andrews,

As an Indian Tribe that has been in receipt of a grant under P.L. 95-608, the Indian Child Welfare Act, since 1980, I wish to address my personal experience with the benefits received, as Tribal Chairman.

The Pyramid Lake Paiute Tribe has utilized their Indian Child Welfare Grant to establish a much needed Day Care Center on the Reservation. This Center is providing care to children ages birth through twelve years who are considered to be at risk in their home situation. These are usually children from a single parent family.

The Day Care Services enable the parent to continue education, accept full or part-time employment or receive a much needed break from the very demanding schedule of raising small children.

The Services provided to our children and families through the Indian Child Welfare Grant have had a very positive impact upon the stablization and maintenance of children within their immediate family setting.

I would implore you to weigh carefully all evidence presented to you as an investigative committee and feel certain you will find the appropriations for the Indian Child Welfare Grants to be well worth continued funding.

Thank you for your consideration.

Sincerely,

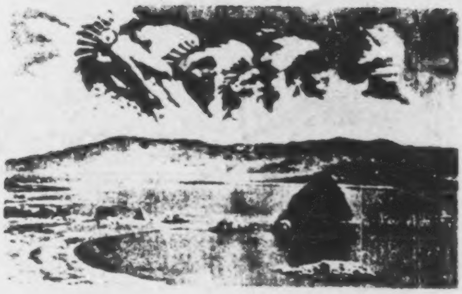
Roy R. Garcia

Roy R. Garcia
Tribal Chairman
Pyramid Lake Tribal Council

RG/sh
c c: Association on American Indian Affairs, Inc.

PYRAMID LAKE PAIUTE TRIBE
SOCIAL SERVICES PROGRAM
P.O. Box 256
Nixon, Nevada 89424

(702) 476-0188 (702) 476-0182



May 15, 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Attention: Pete Taylor

Dear Senator Andrews,

As an Indian Tribal Social Worker, I have had much experience with the Indian Child Welfare Act itself, as well as the programs established through the Grant portion of the Act.

I have worked with Tribes within the isolated areas of Nevada for the past four and one-half years. I can testify to the fact that without the grant funds appropriated through the Indian Child Welfare Act, many, many Indian Children would be in foster care today. Instead, programs funded through the Act have intervened successfully and provided the guidance and assistance necessary to stabilize the family, enabling the children to remain.

One very important aspect of the Act is that all funds are used for on-Reservation programs. There are no administrative funds which are used to fund Bureau of Indian Affairs personnel or other governmental agency costs. All funds are used to directly benefit the Indian children and families. This is very unique, as well you know, among government programs.

I feel it would be a grave mistake as well as a miscarriage of justice to diminish the funds appropriated through the Indian Child Welfare Act. It was an Act established through need and necessity to promote and safeguard the Indian Family as a viable, healthy unit capable of rearing children with a sense of pride, dignity and self-worth. Please do not deny the Indian Family the opportunity to survive.

Your consideration is greatly appreciated.

Sincerely,

Susannah Howe

Susannah Howe
Director/Social Worker
Pyramid Lake Tribe

The Saginaw Chippewa Indian Tribe
7070 EAST BROADWAY MT. PLEASANT, MICHIGAN 48858 (517) 772-5700

May 16, 1984

RECEIVED MAY 21 1984

The Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

RE: Oversight Hearings on Implementation of the Indian Child Welfare Act of 1978

Dear Senator Andrews:

The Saginaw Chippewa Indian Tribe of Michigan is a federally recognized Indian Tribe in the State of Michigan, operating under a tribal constitution adopted March 8, 1937 and approved on May 6, 1937. Our tribe has a community court that operates under a tribal code with six separate titles.

In 1979 the tribe implemented the Indian Child Welfare Act, by appointing a child welfare committee, which now has five members and five alternates. This child welfare committee is a wholly voluntary group, because there are not adequate funds available to pay for their services. The members of the child welfare committee are often undertaking tiring and thankless jobs, because of this the turn-over rate is higher, because the incentive is low. Members of the child welfare committee fully realizes how important their task is, but it is hard to maintain self-esteem in such a position where the return is often negative.

In spite of those negative factors involved, our child welfare committee has cooperated with our community court and Inter-Tribal Council of Michigan, Inc., in forming an excellent child welfare program. We are very proud of being one of the leading states in child welfare activity.

The main problem as we see it is that it appears that the present administration is not committed to the spirit of the Indian child welfare act of 1978. In fiscal year 1984 the urban and reservation Indians in Michigan have taken a 38% cut in funding, of that 38% the Inter-Tribal Council of Michigan has taken 48% cut. Michigan took a 53.29% cut of the total amount allocated to Minneapolis Area Office.

It seems that we are now being rewarded for supplying some of the finest services in the nation, by having our programs emaciated. This is almost unconscionable when you consider how important the task of our child welfare programs are.

The Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
Page 2
May 16, 1984

Up to this fiscal year we have been able to provide the following services to implement the child welfare program in Michigan:

1. Legal services;
2. Placement services;
3. Training of committees and workers;
4. Social services; and
5. Technical assistance to State courts.

In addition to the services provided the Michigan tribes have implemented Title I to the child welfare act, through the following:

1. Providing exclusive jurisdiction to tribal or community courts by implementing procedures and adopting a children's court.
2. Provided liaison with those State probate courts that have the heaviest volume of Indian child welfare cases.
3. Adopted procedures for intervention in State court proceedings where Indian children are involved.
4. Provided the State with alternative for placing Indian children, when jurisdiction is not actually transferred to tribal courts.
5. Provided procedures for transfer of jurisdiction from State to tribal courts.
6. The Inter-Tribal Council of Michigan, through its child welfare attorney, Michael C. Parish, has been conducting negotiations to develop State-Tribal Agreements as provided in Section 109 of the act.

The basic problem the tribes have had is lack of alternatives in dealing with child welfare cases. This is because we do not have all the resources available to us that the States do in dealing with children's problems. For this reason we sometimes, merely intervene and do not ask for transfer of jurisdiction, especially when we know that our courts do not have the resources available to handle the wide variety of child welfare cases that come out. Some of the children's problems, are just too much for our Pre-1984 resources.

Given our lack of resources to assist in the handling of children problems it is unconscionable for the administration to propose cuts that will further reduce our ability to provide services at a critical time when more is needed not less. We believe that our children are our most important asset and we should be doing more not less. Thank you.

Sincerely,

Arnold J. Sowmick, Sr.
Tribal Chairman

PREPARED STATEMENT OF SAVE THE CHILDREN
SUBMITTED BY DR. HELEN M. SCHEIRBECK, DIRECTOR
AMERICAN INDIAN NATIONS PROGRAM

On behalf of Save the Children Foundation (SCF), I would like to submit for the hearing record of the Senate Select Committee on Indian Affairs the following statement on the Indian Child Welfare Act. As you may know, Save the Children Foundation is a private, nonprofit organization. During the past five years it has sponsored the National Indian Child Conference -- an important forum for the exchange of information on current developments in areas of community development and child welfare unique to the Indian population.

At the present time, the American Indian Nations Program of Save the Children operates in eight field offices which serve sixty Indian tribes and communities. The experience of these field offices confirms the need to give continued high priority to administration of the Indian Child Welfare Act. For, adoptions and foster care placements remain a critical problem in the area of Indian Child Welfare. Recent statistics indicate that despite the efforts on behalf of Indian children under the Indian Child Welfare Act that much work remains to be done. To be more specific,

* The rate of Indian to non-Indian placements is up to 27 times higher in at least one state.
* Overall, the rate of Indian to non-Indian placements is four times higher.
* Twenty-five to thirty-five percent of all Indian children are separated from their homes and placed in adoptive homes, foster homes, or institutions. Many of these children are placed in non-Indian homes and face serious social and cultural adjustments as a consequence.

We feel that there are two aspects of the Indian Child Welfare Act that warrant the attention of this Committee: (i) the substantive and administrative provisions of the law which require clarification; and (ii) the adequacy and accessibility of federal funds to carry out the objectives of the law. With regard to the first, we note that many of the witnesses that testified at the April 25, 1984 hearing have already detailed technical amendments to more clearly delineate the scope of state and tribal authority and to clarify specific provisions of the Act. Thus, our comments will focus on the second aspect: funding.

During the years that the American Indian Nations Program of SCF has worked at the community level, it has found that the area of services demanding the largest allocation of its program budget is social welfare. (Among the areas of program activity covered by this program division are welfare, education, public works, housing, health and nutrition, and agriculture. Of the program's total budget for these activities, social welfare accounts for almost 50% of its expenditures). Funds budgeted for social welfare are allocated for both direct services and developing community-based institutions to ensure such services are available on an on-going basis.

On the basis of our experience at the community level, we feel that if the goals of the Indian Child Welfare Act are to be attained then additional funds must be made available to undertake activities that facilitate the maintenance of the family unit in addition to the crisis intervention activities currently carried out under the Act, (i.e. foster placement, adoption, and adjudication of alleged child neglect and/or abuse).

Within most Indian tribes and communities today there are numerous factors contributing to the disintegration of the family unit. At the head of the list is epidemic unemployment. Despite this, as the testimony of witnesses appearing before this Committee on April 25, 1984 confirms, the services central to reducing the likelihood that an Indian child will have to be removed from the family unit, (i.e. supportive, preventive, and rehabilitative services), are those which ICWA programs are often least able to provide due to a lack of funding.[1]

If one were to evaluate successful child protection/family assistance programs currently operating in mainstream that evaluation would disclose that a wide range of services must be in place if troubled families are to avoid dissolution. These services include but are not limited to,

- Access to telephone counselling services twenty-four hours a day.
- Access to family and individual counselling services on a regular basis.
- Access to professional counselling on alcohol and substance abuse.
- Shelters for abused spouses and children.
- Job and personal finances counselling.

In contrast, these services are either not available to most Indian communities or are operated on an intermittent basis at locations that are not accessible to Indian people. Moreover, in light of program budget cuts in recent years, Indians who move off the reservation and into urban areas are most likely to find that family/child welfare support services are not available when they are most needed.

If this Committee shares our belief that the interests of Indian children are best protected by a program that combines crisis intervention with aggressive efforts to eliminate those factors which give rise to families in crisis, then its oversight authority might be profitably exercised in the following areas:

---

[1] Cf. Statement of Ethel Krepps, President of the Oklahoma Indian Child Welfare Association at p. 3, Statement of Melvin Sampson, Confederated Tribes and Bands, Yakima Nation at pp. 3-4.

- An assessment of the current level of need in Indian tribes and communities for preventive, supportive, and rehabilitative services,the level of unmet need, and the minimum per capita expenditure that would be required to adequately address identified needs and develop a service delivery infrastructure.
- An assessment of the current level of federal inter- and intraagency coordination state and tribal funding for ICWA related activities.
- An assessment of how the changes in program structure and funding levels of federal family/child welfare related programs have impacted upon implementation of the ICWA.
- An assessment of whether the rights of Indian children are inadequately protected under current administration of the Act as a consequence of their moving and living off of the reservation.
- Requirement of a program impact statement by agencies or agency divisions with primary responsibility for administration of the ICWA when reductions in fiscal year funding levels are requested for program areas that directly impact upon implementation of the ICWA.

We firmly believe that because children are so vulnerable and so powerless in our society, the goals of the Indian Child Welfare Act are best attained by a two-pronged approach. For families in crisis, the interests of Indian children must be protected in a manner that respects Indian culture and values. However, resources must also be allocated to prevent such family crises from occurring or escalating tu the point that the future of the child within that family unit is in jeopardy.

The most responsive legal system and the most flawless foster or adoptive placement system are commendable goals. However, they offer no guarantees that the damage done to a child during a period of family upheaval and attendant termination of parental rights can be undone.

PREPARED TESTIMONY OF THE SEATTLE INDIAN CENTER, JAMES PRICE, CHAIRMAN OF THE BOARD (TLINGIT); CAMILLE MONZON, EXECUTIVE DIRECTOR (TLINGIT); AND RAMONA BENNETT, DIRECTOR, FAMILY SERVICE (PUYALLUP)

Perhaps the most important consideration for Urban Indian Child Welfare programs at this time is the issue of under who's rules and regulations we can best provide services. The Bureau of Indian Affairs has been a reluctant host, we have suffered illegal and insensitive handling of our funding applications. The regulations interpreting our eligibility were misinterpreted, and our clients the children were at risk of losing the Indian families licensed through our agency.

The office of Human Development Services, formerly H.E.W. was considered the most sensible viable agency for administration of P.L. 95-608 during early Indian Testimony, because of the initial hostility toward the act displayed in Bureau Testimony to Indian efforts establishing protections for our most important resource, our children.

Time has passed and we have learned that there are no Urban Indian children, these children are Tribal children who have rights and resources within their corporations, villages and reservations. The right to a positive identity and the extended family as a resource are important considerations in planning the future for a child.

Our actual tasks include; holding families together with emergency counseling and services, rescuing children already identified by Children's Protective Services as neglected, abandoned or abused and seeking Native families to help these children the next few weeks or the rest of their childhood, if that's necessary.

The Seattle Indian Center will always be appreciative of the opportunities provided by the Administration for Native Amercans to organize, plan and assess on behalf of the thousands of Native Americans within our service area, however, the children rely on our Family Services Division for actual life saving services. We have prevented hundreds of Indian children entering the foster care system and have arranged adoptions and foster placements to serve hundreds more. We cannot survey their needs, the needs are obvious and emergent. The regulations governing A.N.A. at this time would tie our hands for delivery of services.

Despite the Bureau of Indian Affairs history of war, isolation, relocation and the sanctioning of child removal through tens of thousands of interracial adoptions already ordered through state courts across the Nation.......... they have regulations that permit services to be provided. We are relying on the development of computerized systems of identifying tribal affiliations. We are relying on facilities being developed on reservations to serve the disturbed victims of these multiple disruptions. We are relying on the birth of advocacy within the Bureau ranks. During the last three years the staff within the Bureau have gone through a very intensive sensitivity training and these changes may very well occur.

A meeting was held on the Yakima Reservation on March 26, 1984. The Seattle Indian Center representative along with representatives from several Washington State Tribes formulated the following recommendations.

We request that definition of Indian be expanded to include Indian children who are acknowledged by an Indian tribe or Indian community organization so that services under P.L. 95-608 may be offered particularly if that child is over 1/4 blood degree but unenrolled, and further to include Canadian Indian people, as authorized by the Jay Treaty or at least require notification to bands of court actions.

To include Indian children in juvenile justice systems and to permit tribal-state agreements to allow for Tribal Court jurisdiction and utilization of state resources for tribal children requiring services not available within the reservations, also include a process in the Act for tribes to reassume jurisdiction in juvenile justice issues (particularly in 280 states).

Establish separate funding authorization to remove the controls and limitations of the Snyder Act, and also establish an authorization level of 54 million, as recommended during the initial hearings, and establish consistency in funding from year to year on a three year cycle.

We request consideration of a minimum of 54 million per year for fiscal years 1985, 1986 and 1987, with 30 million entitlement to tribes and organizations, and 24 million merit for tribes and organizations. Consider eliminating the grant process and accept the work plans as developed by tribes and organizations consistent with P.L. 95-608. Evaluations should be based on individual program merit with guidelines established and consistent for all projects. The evaluators should be qualified, trained and representative of the service area population. These projects are reducing future social problems by stabilizing children with appropriate Indian role models. Increasing funding is an investment in a better educated more self-sufficient Native future.

THERE MUST BE NOTIFICATION OF BOTH VOLUNTARY & INVOLUNTARY PLACEMENT PROCEEDINGS

We must have federal protections for Indian children including mandates requiring proper identification of who is Indian, Indian blood quantum records on a federal computer, standardized enrollment procedures, controls for compliance on private agencies, notification state-to-tribe and tribe-to-tribe, dollars for and requirements for B.I.A. monitoring in this area with notice to local Indian child welfare programs, and prior to going into court, at the time of intake mandate that both public and private agencies give notice to the Tribes and local Indian Child Welfare programs including children over 1/4 blood degree but not enrolled. Also other systems/individuals who are involved. We must continue to serve and preserve the rights of unenrollable Indians.

Upon notification of contact, the tribes shall have access to the following information: the child's birth name and any AKA's, birthdate, tribal affiliation, birth parents, the social history and the case plan currently under consideration. The Tribes to abide by the ethical and professional standards of confidentiality.

In Title II, Section 201(a)(3), include cultural and family-enriching activities.

Inheritance Issues - We are concerned about all aspects of, including; terminations, enrollment, trust accounts, tribal constitutions, and land holdings. Appendix A (iv) pg. 2 should be revised to read;

> ... parents unless such placement terminates a child's rights of inheritance, enrollment, or cultural reinforcements and add definition of qualified expert witness to read;

> An individual with experience in Indian child development, psychology, child rearing, with the additional qualifications of knowing Indian customs, traditions and laws, and appointed by the child's tribe, Indian Child Welfare program, or other Indian organization (i.e., LICWAC).

In the transfer of jurisdiction from state of tribal court we are concerned with the misuse of definition of good cause to the contrary. The burden of proof in racist court proceedings should rest with the parent(s) in objections to the transfer, to show good cause. Notices should include off-reservation programs, when notice goes out to the child's tribe(s) the tribes can connect with local resources immediately to reduce trauma for the child and family.

P.L. 96-272 or any other federal or state law governing child placement must never be used contrary to the best interest of the Indian child as defined by P.L. 95-608.

The Act should mandate B.I.A. in conjuction with tribal and Indian organizations to establish a state-by-state monitoring committee to ensure compliance of provisions of Act. Public agencies, private agencies and state courts are not complying with the Act and the ICW's are not privy to the information gathered by the Bureau. The Act could be revised to establishment of tribal and off-reservation committees to oversee the monitoring procedures of the Bureau and assist with the operation monitoring plan. Individual state regulations should be reviewed annually. State court/agency reporting system should be reviewed annually.

When guardians ad litem are appointed for Indian children, they shall meet the criteria described for expert witnesses (see number 11). We strongly recomment the following; adoption/penalties (new section to be added to "Definitions.")

A. Failed Adoptions
   1. Any out of home placementof an Indian child who has been adopted including consent to place, a criminal incarceration, a relinquishment, termination deprivation, any court ordered (tribal or state) out of home placement requires:
      A. Notice to biological parents
      B. Notice to Tribes of origin
      C. Notice to the B.I.A.
      D. Notice to local Indian Child Welfare Adoptive Services
B. Upon relinquishment or termination of Indian child as defined by P.L. 95-608 the supervision/custody must be transferred to a local Indian Child Welfare agency managed by a tribe or an Indian organization.
C. Establish penalties and compliance regulations

All these issues are causing problems for the Indian Child Welfare agencies and the children and families we wish to serve.

We appreciate your attention and look forward to these much needed improvements in this life saving law.

Sitka Community Association
A FEDERAL INDIAN TRIBE
Box 4360
Mt. Edgecumbe, Alaska
99835
Tel: 907-747-3207

Design by Robert Davis

Tribal Council
Bill Brady, President
Norman Williams, Vice-President
Lorena Bay, Secretary
Richard Lundy, Treasurer
Frank O. Williams, Jr.
Al Perkins
William Aragon
Andrew J. Hope III, Executive Director

April 12, 1984

RECEIVED APR 1 7 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
SH-838 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Andrews:

As a result of Public Law 95-608, the Indian Child Welfare Act, the Sitka Community Association Federal Indian Tribe wishes to apprise the Committee of the following:

1) This Tribe has been funded by the Bureau of Indian Affairs for Indian Child Welfare programming for three years at a level of 50,000 per year.

2) Funding is to cover the salary of one Indian Child Welfare worker plus a minimal direct services budget for legal assistance to children and families coming within the act, and for adoptive subsidies to Indian families.

3) To meet part of the gap in needed services the Alaska native Brotherhood, Sitka Camp #1, and the American Legion, Sitka Post 13, have responded to requests for money support to the extent their modest resources allow.

4) The Tribe has applied for and obtained Community Services Block grant funds from the Department of Health and Human Services to further supplement the available funding.

5) As a Tribal response to the Act, the Tribal Council delegated to a Tribal Children's and Domestic Relations Court a portion of the traditional decision-making powers of the Council.

6) To support the efforts of the Tribal Children's Court and Domestic Relation's Court, a Sitka Community Association Tribal Indian Child Welfare Agency was created by the Council to provide supervision and services to children and families before the Court, to effect permanency planning where possible, to provide services to families in crisis and/or at risk for maintenance of family integrity, and to serve as Court liaison with state agencies.

7) As a result of Block grant funding the Tribe has developed and enacted a Children's Code, Domestic Relations Code, Standards of Care Outside the Home for Children, and a Civil Code. Work is ongoing with the U.S. Children's Bureau, with the help of a small grant from that agency, to upgrade Codes and Standards of Care. Judge Jim Bowen of the Puyallup Tribal Court is our interface consultant in this effort.

8) The State of Alaska does not recognize our Tribe or it's jurisdiction within the Act. At a local level, however, the State Department

of Family and Youth Services has been most cooperative in notifying the Tribe of children and families coming before the State Superior Court and in mutual case planning to provide services to such children and families within the intent and meaning of the act. There have been over 100 such notifications and mutual planning efforts over the three year funding period.

9) There are approximately six hundred members of the Sitka Tribe in absentee status in other States than Alaska. We have handled court cases in Washington, Oregon, California, Idaho, and New Mexico on behalf of children of the Tribe before those courts. Full faith and recognition has been extended, mutually, in all cases outside Alaska; a total of 46 at this writing. We have been successful in all cases outside Alaska, one of which required appellate action to the Supreme Court of the United States.

10) In two of the cases in the 'south 48' it was necessary to hold Tribal Court hearings in those states. In one, a judge pro.tem, was appointed to hear the case for the Tribe, and in the second, our Court was extended physical facilities by the reciprocating State of Oregon. Both actions were successful in restoring children to Indian families. Our Tribe engages the services of competent Indian practitioners to give services and supervision to children in responding states where return of the families and/or children to Alaska would place a burden on the Indian families.

11) In three instances children have been returned to the Tribe as a result of actions by other State Courts, but not as transfers of jurisdiction. In each instance the Tribe was asked to monitor the case for the reciprocating State Court and to act for that Court. This was accomplished with a resulting re-establishment of intact Indian families in each case.

12) Despite the non-recognition of the Tribal Court program by the State of Alaska, the Sitka Superior Court and the Sitka Bar require notification to the Tribe and a written report to the Superior Court from the Tribe in all Native adoptions coming before the Superior court. A full adoption review is provided by the Tribal Indians Child Welfare Agency as an arm of the Tribal Court in all such cases. These have totalled 43 over the three year period.

13) The Tribe has approached the State of Alaska to attempt to reach an administrative agreement on children's matters through the Governor. The concept paper sent by the Tribe is attached. No action has been taken by the State at this writing, although we are assured the matter is 'under study'.

14) In summary, the Indian Child Welfare Act is working. Even with inadequate funding to completely address the intent of the Act this Tribe has succeeded in carefully selecting cases on a 'most in need' and 'most chance of success' basis, and has been gratified with the results.

15) The intent of the act is to prevent the breakup of Indian families and to provide intervention before the need for court action exists. We are making measurable progress in that direction.

16) The present competitive grant process for Indian Child Welfare monies used by the Bureau of Indian Affairs tends to reward those Tribes which can afford grant writers and to deprive those tribes most in need of Indian Child Welfare programming.

17) The method for securing BIA legal help to Indian families and children before the courts is too cumbersome and too slow to provide such help within the normal notice period for process used by the majority of courts.

18) We, the tribes of Alaska, need help desperately in securing recognition of tribal jurisdiction in family and children's matters by the State of Alaska. The full intent of the Act will never be achieved without such recognition.

19) Those funds presently used for care of Indian Children and services to Indian families by the State of Alaska from federal sources should be made available to the tribes for provision of those services in a culturally relevent context under tribal programming.

Very truly yours,

Andrew Hope III

Andrew Hope III
Executive Director

ILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 28, 1984

SITKA COMMUNITY
MAR 30 1984
ASSOCIATION

Mr. Bill Brady
President
Sitka Community Association
Box 4360
Mt. Edgecumbe, AK 99835

Dear Mr. Brady:

Governor Sheffield has received your correspondence regarding the relations between Sitka Tribe and the State of Alaska for service to children and asked me to reply.

He has asked that the issue be reviewed, and a response will be sent to you shortly.

Sincerely,

Marsha A. Hubbard
Special Staff
Assistant to
the Governor

Sitka Community Association
A FEDERAL INDIAN TRIBE
Box 4360
Mt. Edgecumbe, Alaska
99835
Tel: 907-747-3207

Design by Robert Davis
Tribal Council
Bill Brady, President
Norman Williams, Vice-President
Al Perkins, Secretary
Fred Lewis, Treasurer
Pete Azure Esquire
Sam Martin
Frank D. Williams, Jr.
Andrew J. Hope, III, General Manager

To — Mr. John Shively, Chief of Staff
Office of the Governor

Mr. John Pugh, Deputy Commissioner for Social Services
State Department of Health and Social Services

Date — March 20, 1984

Re — Concept Paper: Relations Between Sitka Tribe and State of Alaska for Service to Children

Proposal — To meet the needs of children of the Sitka Community Association tribe in the realms of child protection, custody, adoption, permanency planning other than adoption, family services, and full social services to children

Rationale — Under the provisions of the Indian Child Welfare Act (P.L. 95-608), the Sitka Community Association is fully prepared to handle all the needs of tribal children. We have a Tribal Children's and Domestic Relations Court, a fully staffed and competent Indian Child Welfare Agency, tribal codes for children, domestic relations, standards of care

We are asking the State of Alaska to make available those funds for the care of tribal children which would be used if the same children were serviced under the Department of Health and Social Services.

We will meet or exceed standards of service required by the State. No staff expenses, administration or support expenses are requested.

May 23, 1984

WRITTEN TESTIMONY

COMMENTS AND RECOMMENDATIONS

Submitted By

THE URBAN INDIAN COUNCIL

TO

THE CONGRESSIONAL OVERSIGHT COMMITTEE

On the Indian Child Welfare Act of 1978

Honorable Senator Mark Andrews and Members of the Oversight Committee:

This testimony has been prepared by Claudia Long, M.S.W., Coordinator of the Urban Indian Council's INDIAN CHILD WELFARE PROGRAM in Portland, Oregon. We share in the concerns for our 7,890 Native Americans identified by the 1980 Census--which constitutes a larger concentration of Indian People than is contained in any of the state's reservations and undercounts the area's actual population by approximately 25%. The amin trust of this document is in support of increased funding and in consideration of the following proposals.

1. *Increased Funding Level*. Would allow programs an opportunity to fulfill quality service-delivery. The impact of limited funding restrictions is evidenced by our 1983 ICW program which was prohibited in purchasing needed legal and mental health services, as well as needed training for program staff. Lack of training and consultation hinders any program performance---and especially true for agencies responsible for protecting and ensuring the rights afforded by federal mandate which is unclear, and many times misinterpreted.

2. *Establish a three-year funding cycle*. Would allow funded programs the opportunity to gain consistency and stability within the community it serves. The detrimental impact of a year-to-year funding cycle is evidenced by our program in that the 7,890 eligible client population---and specifically the 60 families and 200 youth served during FY 83--will NOW be without the supportive services offered by our program, due to lack of funding, and limited funding cycle.

3. *Establish a non-competitive, "entitlement" method of funding*. This method would allow tribes and urban programs to re-focus on entitled quality program components and would increase the incentive to foster cooperation as collegues within the field of Indian Child Welfare, RATHER than focus on competition and, therefore, producing rivalry between program opponents.

We concur with the Native American Rehabilitation Association, Portland, Oregon, that the Act, without allocating adequate funding to Indian organizations and tribes, that complications will continue to result in inadequate social service delivery and inappropriate judicial decisions.

During FY 83, our ICW Program has developed and provided both treatment and preventative services to the tri-county area. Major accomplishments are the development of increased awareness of the Act by the community, and counseling provided to 60 families experiencing potential disruption and/or are in the process of regaining their family. We provided advocacy to juvenile and tribal court systems. Ten child abuse cases were investigated and documented and identified as high priority. Within the Preventative Education, 35 clients participated in women's crisis education, 20 participated in child abuse information classes, 15 adolescents participated in skills for emergency situations and 5 participated in teen parenting support groups. In addition, our Youth component offered alternatives and information to 200 youth and their families through cultural and recreational activities (i.e. basketball, softball) and the opportunity to participate actively in perspectives of Native American philosophy and spirituality, beadwork, drumming and dancing from Indian Elders and Teachers from the Indian Community.

OTHER CONCERNS

It is relevant to suggest that because more than half of all Indians do live in urban areas, that cities be given the opportunity to serve Indian Children and their families---not just those on or near the reservation.

We share concerns faced by other ICW programs that both public and private agencies are unaware of the intent of the law and most caseworkers (and their supervisors) are unfamiliar with procedures set forth by the law. Information and training must be provided on the Act in order to be in contract compliance---including enforcement by penalty for non-compliance.

SUMMARY

Again, inadequate funding, limited yearly cycle, and competitive status restrict implementation by programs in providing services (in support of the Act.)

I respectfully submit this testimony in behalf of the Urban Indian Council Indian Child Welfare Program which has been terminated because of lack of funding; and in response to the Portland community--both Indian and non-Indian who are concerned for the welfare of Indian Children. Copies of support letters are attached and high-lighted for further insight of the tragedy the Indian families may experience because of present funding restrictions.

Very Respectfully Yours,
URBAN INDIAN COUNCIL, INC.

Claudia R. Long, M.S.W.
Indian Child Welfare Program Coordinator
1200 S.E. Morrison
Portland, Oregon 97214
(503) 230-0861

Native American Program
OREGON LEGAL SERVICES CORPORATION

2328 N.W. Everett
Portland, Oregon 97210
(503) 223-9483

January 11, 1984

Nelson Witt
Bureau of Indian Affairs
Social Services
Portland, Oregon

Dear Mr. Witt:

This letter is in support of the Indian Child Welfare Program of the Urban Indian Council.

Our office provides legal training and information on the Indian Child Welfare Act. We have conducted training on the legal aspects of the ICWA for the staff of the Indian Child Welfare Program. We also are available to consult with them on any legal matters that arise.

We have been happy to respond to the Program's requests for our assistance, and we have been impressed with their dedication to the needs of Portland's Indian children.

We fully support the Program, and hope that it will be given the necessary resources to continue its vital work, perhaps even to expand the services it now is able to offer.

Yours sincerely,

Gary Forrester
Director

GF:sjr

PORTLAND PUBLIC SCHOOLS
531 S.E. 14th Avenue / Portland, Oregon 97214
Phone: (503) 232-4424, Exts. 46-50

INDIAN EDUCATION ACT PROJECT

10 January 1984

TO WHOM IT MAY CONCERN:

I am writing this letter in support of the Urban Indian Council Indian Child Welfare Act Projects' application for funding from the Bureau of Indian Affairs.

We strongly support their prevention and treatment activities and view them as an intergral part of the social service network that serves Portlands' Indian Community. We have been working closely with ICW staff to develop a cooperative package of social services and activities.

The school drop out rate among American Indian Students in our district is nearly fifty percent. We know that social factors such as broken families and cultural breakdown have a significant and detrimental effect on the progress of many Indian students in school.

Again, I would like to urge your serious consideration in funding this important program. Thank you for your time and consideration.

Sincerely,

Robey J. Clark
Project Coordinator

A United Way Agency
FOSTER PARENTS ASSOCIATION
109 NE 50 Portland, Oregon 97213 (503) 232-8383

January 12, 1984

Bureau of Indian Affairs
Social Services
℅ Urban Indian Health Clinic
1200 S.E. Morrison
Portland, OR 97214

Subject: Letter of Support

To whom it may concern:

The Foster Parents Association serves approximately 1400 foster families in the metropolitan Portland area, those families providing care for about 1500 children each day. As an agency with a strong focus on the areas of training, peer support activities, and advocacy for children in foster care, we work with numerous agencies, both private and public, to assure appropriate service delivery to children needing substitute care.

Indian Child Welfare programs that include both prevention and treatment aspects have been instituted locally and now seem to have a broad base upon which to build within the Indian community in the area of developing foster homes specifically trained and especially able to care for native American children. Cooperating with the Oregon Children's Services Division and the Indian Child Welfare Program, the Foster Parents Association encourages efforts aimed at recruiting and training such foster families as well as of support groups that evolve out of common needs and experiences in providing care to foster children.

Additional program proposed by the Indian Child Welfare Program that should have long-term beneficial results in helping youngsters includes the Big Brother/Big Sister program.

Sincerely,

Jinny White

Jinny White
Training/Volunteer Coordinator

VICTOR ATIYEH
GOVERNOR

Department of Human Resources
CHILDREN'S SERVICES DIVISION
Child Protective Services Branch
1031 E. BURNSIDE, PORTLAND, OREGON 97214-1380 PHONE (503) 238-7555

January 11, 1983

Bureau of Indian Affairs
Social Services Department
c/o Urban Indian Council
Indian Child Welfare

To Whom It May Concern:

I am a caseworker with the State of Oregon's Children's Services Division and have worked with the staff at the Urban Indian Council for a number of years in regard to Indian children in my caseload. I have found the Urban Indian Council and the Indian Child Welfare to be an invaluable resource for Indian families. They have provided free health care, psychological evaluations and ongoing counseling, parenting and self-esteem classes, foster home recruitment, home visits, supervision of parent-child visits, assistance in developing a workable service plan for families, etc., etc. They have worked well with my clients, establishing trust and rapport with them and easing the often-felt strain between Indian families and C.S.D. The Urban Indian Council has encouraged inter-agency cooperation and strives to improve the quality of it's services. I am in strong support of any attempt on their part to broaden the scope of the services they provide and hope that funds will be made available to them for further program development into areas such as a homemaker program, Big brother program, and Indian grandparent recruitment and support.

Sincerely,

Bart Wilson, Manager
Child Protective Services

Elizabeth Pierson

Elizabeth Pierson, Caseworker

EP/mk

WAVERLY
CHILDRENS
HOME

BOARD OF TRUSTEES

Mary Ann Myers
President

Jerome L. Anderson
Albert J. Bannon
Ann Bard
Henry Brazil
Clyde V. Brummell
Dennis B. Ferguson
Muriel Goldman
Peggy Harris
Donald Harris
Jay Lewis
Janet Littlefield
Shirley Ludeman
Frank Nuestle
Marcia Olson
Bob Pinson
Jerry Pool
Karen Prohaska
Sandra Ragen
Richard Roberts
Phil Skutt
Dick Smelser
Les Stevens
Gale Swanson
Greg Wentworth
William Young

Cynthia A. Thompson
Executive Director

EMERITUS BOARD

Peter Brix
Leonard Forsgren
Andy Honzel
Sheldon Jones
Bob Ludeman
Dick Robinson
Ron Timpe
Emmiliese von Clemm
Harold Weston

"A UNITED WAY AGENCY"

STATEWIDE SERVICES TO
CHILDREN AND FAMILIES
SINCE 1888

3550 S.E. WOODWARD ST.
PORTLAND, OR 97202
(503) 234-7532

January 10, 1984

Bureau of Indian Affairs
P.O. Box 3785
Portland, Oregon 97201

Dear Sir:

This is a letter of support on behalf of the Indian Child Welfare Program. They have been supportive in helping us with a Warm Springs Indian child in long-term residential treatment, by providing consultation, play therapy and Big Brother resources. We have found their expertise essential in our understanding of cultural and ethical concerns affecting treatment directions in our interactions with the Warm Springs Reservation Tribal Court.

Their services of prevention, treatment and referral are greatly needed in this community. Their highly professional staff of therapists, psychologists, psychiatrists and youth workers will require your continued support and endorsement if they are to carry on this good work.

Most cordially yours,

Donald R. Ebert

Donald R. Ebert
Family Therapist, B.S., M.Ed.

DE:aw

January 12, 1984

PORTLAND MALL
J.A. JACKSON

To Whom It May Concern,

The Urban Indian Council fills a very important need in our community. They help raise the consciousness of indian people living in an urban environment by making them aware that there is a tradition an a culture that each "Urban Indian" is a part of. This is extremely important for people who have been displaced from their homeland for whatever reason. The Council also puts indian people in contact with each by having special programs and activities.

The Urban Indian council is working to upgrade their services all the time. They are working on a Big Brother - Big Sister program and a Grandparents program at this time. They also sponsor activities for our young people so they will have social activities that are positive. The people of the Urban Indian Council become personally involved with their clients while keeping a professional attitude. They care about the people of the indian community.

We, as a licensed foster family, have worked with the Urban Indian Council as a support group for our indian foster children. They work very hard to uphold the law of placing indian children with indian foster families. They also help with the nutrition of the child and visitation. We appreciate their work in these areas. The Council is in the process of recruiting more indian foster families by hosting monthly workshops. We need more indian foster homes to help the children of families in trouble.

The Urban Indian Council helps foster public

PORTLAND MALL
J.A. JACKSON

awareness of the existence of an indian population in their midst. This often goes unnoticed. The Council is a positive step in our country to help the indian people. For their work with indian people and the public as a whole we support the Urban Indian Council and their application for a grant.

(ICW INDIAN FOSTER FAMILY)

Jan 11/1984

Urban Indian Council
I.C.W. Program

To Whom it may concern.

I'm writing this letter of support for the I.C.W. It is really needed in our community for the needs of our Indian Children. It has helped me in a matter of a few hours. With the work of our staff on the I.C.W. If not for I.C.W. I would not have my Grandson today.

(ICW CLIENT)

JOHN SPELLMAN
Governor

KAREN RAHM
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Olympia, Washington 98504

RECEIVED MAY 21 1984

Mr. Pete Taylor
Senate Select Committee on Indian Affairs
United States Senate
Hart Senate Office Building
Washington, D.C. 20510

Dear Pete:

Please find attached a complete packet of testimony materials reflecting preparation and discussions involving tribal governments, Indian organizations, and the Washington State Department of Social and Health Services from December 1983 to April 1984.

I believe the attached material contains significant details from both the Indian and state agency perspectives here in Washington and should be made part of the record. It is my understanding that the complete packet may have been already submitted during the hearings. However, I am also sending the material directly to the Committee just in case.

Please feel free to contact me at (206) 754-1698 if I can be of further assistance.

Sincerely,

Don

Don Milligan, MSW
DSHS Indian Affairs Section
OB 14
Olympia, WA 98504

Attachment

JOHN SPELLMAN
Governor

KAREN RAHM
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Don Milligan, Chief
Office of Indian Affairs
M.S. OB-44G

DATE: January 12, 1984

FROM: Winifred Wiatrak, Regional Administrator
Region 6, KR-23

SUBJECT: INDIAN CHILD WELFARE ACT

In response to Bob Lolcama's communication of January 3, 1984, I have asked all CSO's in Region 6 to respond per his request. Several offices have responded with positive aspects of the current act as well as recommendations for enhancements. These are summarized below:

- The single most important aspect of the current Indian Child Welfare Act has been the creation of Local Indian Child Welfare Advisory Committees. Offices with active committees find that communications and planning for Indian children has been greatly enhanced through committee activity.
- Placement and custodial requirements set forth in the act have brought about greater awareness on the part of non-Indian DSHS staff of the special needs of Indian children entering the social service system. Through information and committee activity the department is better equipped to address those needs.
- The current act supplies no funding or inadequate funding to allow committees to implement programs within the Indian Child Welfare Act. Examples include extensive coverage responsibility for existing Indian social service staff, gaps in due process because of lack of attorney resources to Indian tribal courts and transportation problems effecting return of Indian children to proper jurisdiction.
- The act does not address the needs of Canadian Indian children. The state act addresses Canadian Indian children but other border states may also benefit from recognition at the federal level of these special circumstances.
- The lack of specific procedural information lends itself to confusion regarding the role of DSHS when the child's tribe assumes jurisdiction and the child remains in a DSHS foster home.
- Delays in tribal court action or council action sometimes cause problems in meeting the rigid deadlines of P.L. 96-272.
- The requirement to research enrollment eligibility for Indian children when potential tribal affiliation is with tribes outside the State of Washington causes delays and staff frustrations. The Bureau of Indian Affairs is notably lacking in timely response to research requests.

Thank you for the opportunity for input.

WW:lkb
cc: Don Gamble
Bob Utter

JOHN SPELLMAN
Governor

KAREN RAHM
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Olympia, Washington 98504

April 12, 1984

INDIAN CHILD WELFARE ACT HEARINGS ALERT

HEARINGS
Our most recent information indicates that the Senate Select Committee on Indian Affairs will hold a hearing on the Indian Child Welfare Act:

Date and Time --- April 25 at 10:30 a.m.
Place --- 124 Dirkson Senate Office Building
Washington, D.C.

TESTIMONY
Please find attached a complete packet of material covering testimony preparation carried out by representatives of tribes and Indian organizations in Washington State.

Attachment #1 is the final draft of recommendations covering eastern and western Washington Indian discussions summarized by Betsy Redbear, Michelle Aguilar, and Ramona Bennett (plus comments by Nancy Tuthill, American Indian Law Center).

You are requested to review this material and submit tribal and organizational resolutions in support of attachment #1. One copy of your resolutions plus attachment #1 should go directly to:

Senate Select Committee on Indian Affairs
U.S. Senate
Hart Senate Office Building
Washington, D.C. 20510
Attention: Pete Tayler

A second copy of your resolution should be mailed to:

Betsy Redbear
Nak-Nu-We-Sha
P.O. Box 151
Toppenish, WA 98948 Phone: (509) 865-5121

Betsy will attach your resolutions to testimony that will be presented by a member of the Yakima Tribal Council at the hearing.

Attachments #2 through #5 will be attached to the Yakima Tribe's testimony for the hearing. These attachments are attached here to provide you with supplemental support data for any additional testimony your tribe or organization may wish to submit for the hearing. You are encouraged to submit your recommendations directly to the Committee.

Don Milligan
DSHS Indian Affairs
Mailstop OB 14
Olympia, Washington 98504

(206) 754-1698

WASHINGTON STATE TRIBES INDIAN CHILD WELFARE ACT RECCOMENDATIONS

#1. Definition of Indian - Washington State Definition preferred
   - A. Include Indian Children who are acknowledge by an Indian Tribe or Indian community organization
   - B. Include Canadian Indian People, as authorized by the Jay Treaty or at least notify tribe of court action

# 2. Include Indian children in juvenil justice system
   - A. Tribal-state agreement to allow for Tribal court jurisdiction and utilization of state resources
   - B. Include process in Act for Tribes to reassume jurisdiction in juvenile justice issues (particularly in 280 states)

3. Funding.
   - A. Establish separate funding authorization (current authorization is pursuant to the Snyder Act.)
   - B. Establish an authoriztion level of 54 Million.
   - C. Consistency in funding from year to year on a 3 year cycle.
   - D. Minimum of 54 million per year for fiscal year 1985, 1986 & 1987.
     1. 30 million entitlement to Tribes and organizations.
     2. 24 Million merit Tribes and organizations
        - A. Eliminate grant process and accept work plan as developed by Tribes & organizations consistent with P.L. 95-608.
        - B. Evaluation based on individual program merit.
          1. Evaluation guidelines will be established and consistent
          2. Evaluators will be qualified, trained and representative of the service area population.

Attachment #1

#4.

NOTIFICATION/BOTH VOLUNTARY & INVOLUNTARY PLACEMENT PROCEEDINGS

1. IDENTIFYING WHOS INDIAN
2. ENROLLMENT PROCEDURES
3. CONTROLS FOR COMPLIANCE ON PRIVATE AGENCIES
4. NOTIFICATION STATE-TO-TRIBE, TRIBE -TO -TRIBE
5. TIGHTEN UP ON BIA MONITORING IN THIS AREA
6. PRIOR TO GOING INTO COURT/AT THE TIME OF INTAKE
   MANDATE THAT BOTH PUBLIC & PRIVATE AGENCIES GIVE NOTICE AT THE
   POINT OF INTAKE:
   ALSO OTHER SYSTEMS/INDIVIDUALS WHO ARE INVOLVED

A. Upon notification of contact, the tribes shall have access to the following information:

   1. Child's birth name and any AKA's, birthdate, tribal affiliation(s) Birth parents.

   2. Social history

   3. case plan

B. The tribe will abide by the ethical and professional standards of confidentiality

#5.

In title II, Sec. 201 (a) (3), include cultural and family-enriching activities

   A. Continue to serve and preserve the rights of unrollable indians

#6.
Inheritance issues - all aspects,

   A. terminations
   B. enrollment
   C. Trust accounts
   D. tribal constitutions
   E. land holdings

#7. Appendix A (iv) pg. 2 (to read)
.... parents unless such placement terminates a child's rights of inheritance enrollment, or cultural reinforcements

#8. Add defintion of qualified expert witness
   A. An individual with experience in Indian Child development, psychology, child rearing, with the additional qualifications of knowing Indian customs, traditions and laws, and appointed by the child's tribe, Indian child welfare program, or other Indian organization (i.e. LICWAC)

#9

Transfer of jurisdiction

1. State to tirbal court

    A. Problems with the definition of good cause to the contrary

    B. The burden of proof shall rest with the parent(s) objecting to the transfer to show good cause

2. Secondary back up by off-reservation programs when jurisdiction is denied by a Tribe, when notice goes out to the child's tribe(s) names and location of Indian child welfare services and tribes will be included.

#10

PL 96272 or any other federal or state lawes governing child placement must never be used contrary to the best interest of the Indian Child as defined by 95-608

#11

Act mandate B.I.A. in conjunction with tribal and Indian organization establish a State-by-State monitoring committee to enusure compliance of provision of Act

A. Public agencies
B. Private agencies
C. State courts
D. Establishment of Tribal and Off-Reservation committee's to oversee the monitoring procedures of the Bureau and assist with the operational monitoring plan

    1. Individual state regulations reviewed (annually)
    2. State court/Agency reporting system (annually)

#12

When guardians ad litem are appointed for Indian Children, they shall meet the criteria described for expert witnesses (see number11)

#13

Adoption/Penalties (new section to be added to "Definitions"

A. Failed Adoptions

    1. Any out of home placement of an Indian child who has been adopted including consent to place, a criminal incaceration, a relinquishment, termination deprivation, any court ordered (Tribal or State) out of home placement requires:

        A. notice to biological parents
        B. notice to the tribes of origin.
        C. notice to the B.I.A.
        D. notice to local Indian child welfare adoptive services.

B. Upon relinquishment or termination of an Indian Child as defined by PL 95-608 the supervision/Custody must be transferred to a local Indian Child Welfare agency managed by a tribe or an Indian organization.

C. Establish Penalties and compliance regulations.

AMERICAN INDIAN LAW CENTER, INC.
P.O. BOX 4456 – STATION A
1117 STANFORD, N.E.
ALBUQUERQUE, NEW MEXICO 87196
PHONE (505) 277-5462

MEMORANDUM

TO: Roger Jim, Chairman
Yakima Tribal Council

FROM: Nancy M. Tuthill, Deputy Director

RE: ICWA Oversight Hearing

DATE: April 2, 1984

Pursuant to the request of Ms. Elizabeth RedBear, Yakima Nak-Nu-We-Sha Program, and other Committee members who met March 26-27, 1984, to discuss the ICWA Oversight Hearing, I have prepared comments on their consolidated recommendations as well as comments on other areas of concern. My comments address the thirteen tribal recommendations.

1. Definition of Indian - The expanded definition is commendable in that it seeks to fill the gap wherein some Indian children fall through the cracks of ICWA. I do not, however, think that Congress will expand the definition to include Indians that fall outside the federal definition of member or eligible for membership in a federally recognized tribe and the biological child of a member.. I would recommend that the definition be expanded to include children who are members or eligible for membership and the biological child of a member or parent who is eligible for membership. I am aware of one controversial case in Washington that could have been more easily resolved had the ICWA applied to the child whose parent was eligible for membership. But the child was not eligible until the parent changed tribal membership after the case was litigated.

2. Juvenile Justice Issues - I wholeheartedly recommend that 2.b. of the recommendation on the reassumption of jurisdiction in P.L. 83-280 states be expanded to include juvenile offenders/juvenile delinquents and status offenders. When Congress authorized reassuming exclusive jurisdiction over child custody matters, they ended up giving only half of the pie to tribes. Children are a valuable resource of tribes and as such, all Indian children could benefit from returning to their tribe's reservation. The arguments against such an expansion of ICWA are that the ICWA was not intended

RECEIVED
APR 10
DHHS - OFFICE OF

to include those other children and that it will cost a lot to improve tribal juvenile justice systems to accommodate exclusive jurisdiction over such cases. Some tribes do not have juvenile detention facilities; nor do they have shelter care facilities; therefore, such an addition may not be feasible for some tribes without additional time to plan and additional money to develop resources. The types of cases would probably be necessarily limited to misdemeanors, as the U.S. Attorney's offices would frown on exclusive jurisdiction over a case involving a major crime because they would have to prosecute the cases in federal court. In spite of the potential arguments against reassumption of exclusive jurisdiction over juvenile offenders, it would be left up to the individual tribe to determine whether they have the resources to accommodate such cases.

The other issue under juvenile justice suggests that tribes be allowed to enter into tribal-state agreements on juvenile offenders and that they be allowed to access state resources. The ICWA authorized agreements regarding issues of jurisdiction primarily because the Indian Civil Rights Act's amendment to P.L. 83-280 prohibits the giving up of tribal jurisdiction without certain conditions being met. The ICWA, in effect, supercedes those conditions or prohibitions in child custody matters only. Tribal-state agreements were not invented under ICWA, they have been entered into for many years and on many subjects; therefore, tribes can negotiate agreements on juvenile offenders provided that they do not violate the Indian Civil Rights Act's amendment to P.L. 83-280. Many tribes use state resources and it may be by an agreement on reimbursement of cost for use of such resource, e.g., juvenile detention center or juvenile diagnostic facility. The issues of accepting a tribal court order for placement in the state facility and the subsequent payment for placement by the state are hard issues. It is unlikely that Congress would require full faith and credit of tribal court orders in such placements unless the tribe agreed to pay for the placement. Such action would be analogis to the federal courts or other state courts ordering x state to accept a placement and having x state pay for the placement.

3. Funding - One primary criticism that I have had of ICWA since its enactment has been the statutory funding authorization under the Snyder Act. The BIA has continually robbed Peter to pay Paul under ICWA Title II because ICWA's funding

authorization is the same authorization as the entire BIA. Congress should have authorized separate funding, which would have partially eliminated the problem with ICWA funding level. The recommended CBO funding level of ICWA was $125 million spread over a five-fiscal-year period, with approximately $80,000,000 for construction. Rep. Udall amended the bill, HR 12533, to eliminate the construction costs and projected expenditures of $44 million spread over five fiscal years. See Congressional Record H12854, October 14, 1978.

Congress sometimes puts the cart before the horse and in the case of ICWA, they did just that. They should have authorized and appropriated dollars for tribal program development before mandating transfers to tribal court under ICWA. The jurisdictional mandates of ICWA placed the tribes in a precarious situation of deciding whether they should accept or request transfer from state court. Also, this decision should be based upon an assessment of available resources, e.g., availability of foster homes, money for foster care payments, willingness of extended family members, etc. A higher funding level, consistency of funding and a three-year funding cycle would greatly assist tribes in making the decision of accepting or requesting transfer.

The tribes' requested funding appropriation level of $54 million per year would be nice but is unrealistic, especially since the recommended funding request was $15 million from the western tribes. A funding level of $54 million would cost approximately $38.00 per Indian person who was counted under the 1980 census. But what percentage of those persons counted or uncounted in the 1980 census would be served under ICWA by tribal or Indian organizations? There should be a clear justification for requesting $54 million, e.g., according to AAIA's 1976 statistics Indian children have 200-1 odds of being placed out of home as compared to other children; therefore, because of this risk, a higher level of dollar funding is necessary to prevent the removal or to reunify the family. I don't know what the odds are, how many families will come into contact with the state system, or how much money is realistic as to cost per person, but to provide Congress with better data at the oversight hearing examples, cases or statistics should be used. A general statement may not be good enough for Congress. They need to hear the horror story, the real, live here-and-now of how ICWA hasn't worked and how it can be improved by expended more dollars to save the most valuable resource the tribes have - their children. Rep. Udall projected costs of $44 million over a five-year period will be hard to overcome but examples are a must.

The evaluation process of ICWA, Title II grant applications has been a critical concern of many tribes. There needs to be a more consistent method of evaluation. But again, examples should be used to bolster the argument of how to improve the application process.

4. Notice - The issue of adequacy and proper notice to tribes of ICWA has caused many debates across Indian country. One clear issue on notice is the requirement or non-requirement of notice to tribes in a voluntary placement. Congress apparently felt that notice to tribes in voluntary placements was not necessary, as the statutory language does not appear to mandate such notice. This omission of notice to tribes apparently was based upon the issue of rights of parents to request of anonymity, etc. The Act does not prohibit intervention by the tribe in voluntary placements nor does it encourage intervention. If a tribe finds out about a voluntary placement through the moccasin telegraph, they could request transfer and intervention but I suspect that the parent would object to transfer and the state court might refuse the right of intervention. I am aware of at least one state court allowing such intervention but that state court should not have been adjudicating the case because it was a clear case of exclusive tribal jurisdiction.

One major gap of ICWA is that notice to tribes is not mandated until an action is initiated in the state court. This prohibits consultation and assistance by a tribal agency or Indian organization in prevention or reunification activities. If a state CPS caseworker could utilize tribal agencies or Indian organizations to prevent removal or reunify the family prior to the filing of a petition, it would be in the best interest of the child. Congress has identified the need for permanency planning by its enactment of P.L. 96-272, Adoption Assistance and Child Welfare Act of 1980, since its requirements suggests that prevention and reunification are priorities. ICWA should provide for notice to tribes upon first contact with an Indian family, as waiting until the petition is filed creates problems for the child, family and tribe.

Whether or not notice is properly and timely provided to tribes should be monitored by the BIA or another identified agency or group. If notice is not properly provided, the case could later be invalidated in an appellate court.

5. Title II Activities - Including cultural and family-enriching activities in Title II grant programs is appropriate but it is doubtful that Congress would authorize expenditures on non-federally recognized families.

6. Inheritance Issues - Inheritance issues are of utmost importance in ICWA adoption cases. Without proper notice to tribes and BIA, a child could lose money and their rights to property. This is very critical if a tribe requires membership verification and the tribe did not receive the required membership information on an adopted child.

7. Adoption Placement - I'm not sure that adding "parents unless such placement terminates a child's rights of inheritance, enrollment or cultural reenforcements" to Sec. 4(1) iv. will accomplish its apparent intent. The proposed language needs to be reworded and its intent clarified by example.

8. Qualified Expert Witness - Adding a definition of "qualified expert witness" would assist state courts. But I think it's unlikely that Congress would tell state courts who an expert witness must be in an ICWA case.

9. Transfer of Jurisdiction - The legislative history on "good cause" for denying transfer to tribal courts indicates that state courts are to use a modified doctrine of forum non convenieus. The state court guidelines, F.R. November 26, 1979, set forth good examples for the state courts to use when finding good cause, but many state courts are not following those "guidelines." It would be nice if there were some way to force all state courts to use the same standard for finding good cause.

   The issue of requiring a parent show good cause when they object to transfer to tribal court is not open to much debate. It is highly unlikely that Congress would require that a parent show good cause; their objection to such transfer would be enough to prevent the transfer. Even though ICWA recognizes the importance of tribes having a say in the future of their children, Congress also recognized the rights of parents.

I'm not sure of the purpose of notifying an off-reservation Indian program if a tribe refuses to accept transfer of an ICWA case. This issue should be more clearly stated.

10. Federal and State Child Placement Statutes - The issue of federal or state laws that are or appear to be contrary to ICWA may not be a valid concern. ICWA would clearly oust any contrary state law under the Supremacy Clause of the U.S. Constitution. Federal statutes that expressly contradict ICWA is a harder issue to resolve. Although P.L. 96-272 appears to contradict ICWA, I would argue that it enhances ICWA because of the focus on prevention and reunification. The one major issue under P.L. 96-262 is its affect on TPR petitions after the child has been in placement 18 months. Even though a TPR petition is filed, the standard of proof under ICWA of "proof beyond a reasonable doubt" will still be the required proof.

11. Monitoring Committee - As stated under Number 4 of these comments, there needs to be some sort of monitoring system. Establishing such a system outside of the government, e.g., BIA or IHS would be unwieldy and costly. It might be difficult to persuade Congress to set up such a system.

12. Guardian ad Litem - It would be extremely difficult to convince Congress that a non-legal trained person should always serve as a guardian ad litem in ICWA cases.

13. Adoption/Penalties - There needs to be a method of prohibiting doctor and lawyer adoption placements. In particular, these placements should not be made without home studies or without following ICWA. Establishing civil or criminal sanctions might prevent such placements but how will the sanctions be enforced, if the lawyer intentionally fails to advise the state court that the child is an Indian child? A great deal of thought needs to be given to enforcement of sanctions.

Nancy M Tuthill

Nancy M. Tuthill

NMT/bj

cc: Elizabeth RedBear

JOHN SPELLMAN
Governor

Karen Rahn
XXXXXXX
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Olympia, Washington 98504

December 27, 1983

TO: Indian Child Welfare Programs

FROM: Don Milligan

SUBJECT: PREPARATION FOR SENATE HEARINGS ON AMENDMENT OF THE INDIAN CHILD WELFARE ACT

As most of you know, we have been told that the Senate will be holding hearings regarding the possible amendment of the Indian Child Welfare Act and its regulations possibly some time in late February or March, 1984. The specific focus of the hearings has not been set yet, but we should probably proceed looking at all aspects of the act.

At the request of Roger Jim Sr., Yakima Tribal Council, I have scheduled a work session for January 19 and 20 to provide tribal and off-reservation Indian Child Welfare Program staff the opportunity to share their ideas, concerns, recommendations and strategies to prepare for the hearings. See map for location.

First, we are asking that each of you review your own experiences and concerns with the act since 1978 in such areas as funding level, grant application process, state court issues, state and private agency issues, tribal court issues, federal agency issues, etc. Second, we are asking that each of you obtain a tribal or board resolution containing recommendations for amending the Indian Child Welfare Act based upon your own program experiences. Please bring extra copies to the work session.

During the work session we will ask participants to share their concerns and recommendations.

All participant recommendations will be compiled with summary commentary into one document. This document will be distributed to all Indian Child Welfare Programs with the request that you work with your tribal council or board of directors to pass a resolution in support of the combined document. In addition to each tribe/organization sending your resolution and the combined document to the Senate hearings and to your legislators, we are asking that each of you send a copy of your resolution to me. I will see to it that it is attached to a combined document with all resolutions from Washington State tribes and organizations and presented by a tribal leader during the hearings in Washington D.C. in February.

Those of you who cannot attend the work session please send a copy of your resolution and recommendations to me and it will be distributed there. You will also receive a combined document.

For your convenience, I have attached some material related to possible amendments.

Attachments

INDIAN CHILD WELFARE ACT
WORK SESSION AGENDA

January 19 & 20, 1984

January 19, Thursday

Presentations:

9:30 - Evelyn Blanchard, Association of American Indian and Alaska Native Social Workers

10:00 - Goldie Todd, Quinault Tribe, and Panel

Ellen Ides Makah
Jennifer Clark Nooksack Swinomish
Mary Stephenson Skokomish

11:00 - Debbie VanBrunt, Lummi Tribe
Larry Lamebull, Puyallup Tribe
Marie Starr/Karen Hausrath, Muckleshoot Tribe, and Panel

12:00 - Lunch

1:30 - Gwen Gus, Colville Tribe
Georgia Peone, Spokane Tribe
Betsy Red Bear, Yakima Tribe

2:30 - Esther Crawford, United Indians Of All Tribes, and Panel

3:30 - Additional Participant Presentations

4:30 - Adjournment

January 20, Friday

9:00 - Discussion of Recommendations

11:00 - Strategy Discussion

12:00 - Adjournment

Rough Notes
January 19 and 20, 1984

Quinault Tribe

1. Need access to DSHS files prior to tribal intervention (documentation of effort).

2. Court and DSHS notification of tribe untimely in several instances.

3. Need adequate definition of expert witness, e.g., must be Indian or designated by a tribal government.

4. Unwed parents/transfer issue.

   - Fathers (non-Indian) who have not declared paternity have frustrated transfers from state to tribal courts.

5. Divorce.

   - Non-Indian mothers obtaining custody in state courts.

6. Refusal of tribal courts to accept jurisdiction in some instances.

   - Training of tribal judges.
   - Protection of unenrollable Indian children.
   - Handling of children from other tribes.

7. Conflicts among various children's codes, e.g., Indian Child Welfare Act, WAC, PL 272, HB 2768, tribal codes, etc.

8. Lack of understanding by some tribal courts regarding higher standard of care provision, e.g., WAC.

9. Failure of some tribes to notify other tribes related to intervention.

10. "Good Cause to the Contrary" provision.

    - Objection of the non-Indian parent should not result in automatic non-transfer to tribal court.

11. P.L. 272 vs. Indian Child Welfare Act (Group Care).

    - Tribe must turn custody over to DSHS to receive benefits.

12. Under P.L. 272 if tribal courts do not do a timely review foster parents licensed by state-certified Indian programs do not receive state payments.

13. Clarification of roles of tribal court and social worker (program).

14. Variation of DSHS implementation of WAC from office to office.

[redacted]

15. Voluntary agencies:
    - Some ignoring the ICW Act.
    - Some not giving notice to tribes.

Swinomish-Nooksack-Upper Skagit Tribes

1. Conflicts develop when more than one tribe involved (need for inter-tribal agreements).
2. Unawareness of Courts and DSHS workers:
    - Need to share information prior to intervention.
    - Notification when CPS case is opened.
3. Courts not meeting standards of evidence.
4. Tribal access to court documents and DSHS.
5. Court orders should specify cooperative effort between DSHS, state court worker, tribal/off-reservation Indian programs.
6. State dumping responsibility on tribes, e.g., CPS investigation.
7. State refusal to investigate Indian cases.
8. Placement preference:
    - Inconsistency of federal AFDC regulations regarding "definition of relatives," tribal definitions, state implementation, and intent of ICW Act, i.e., no payment to relatives if they do not meet AFDC definition.
    - Clarification of extended family needed.
9. Placement preference not always being followed by DSHS, nor is consultation with tribes always obtained by DSHS.
10. Placement in tribally approved homes should be a requirement.
11. Hidden placements in AFDC.
12. Paternity problems:
    - No paternity established.
    - Removal from paternal relatives.
    - Threats of removal.
13. Recognition of tribal standards for establishing paternity - inconsistency from DSHS office to office.

Makah Tribe

1. Funding for services.
    - Relative payment and other services.
2. P.L. 272.
    - DSHS dictating to tribal court regarding content of order in order to get DSHS payment.
3. No provision in tribal court or code for Canadian Indian children.
4. Funding:
    - Recognition for success of funded programs.
5. Competitiveness for funding jeopardizes on-going programs.

Skokomish Tribe

1. Failure of BIA to take leadership regarding implementation of ICW Act.
2. Absence of a reporting system that accurately reflects activities of tribal programs.
3. State court failure to give notice to tribes.
4. Services to people who live off-reservation.
    - Not receiving service.
5. Expert witness credentials.
6. Voluntary placements.
    - No information being given to tribe and relatives.
    - Parents not receiving counseling regarding tribal resources.

Lummi Tribe

1. Funding.
    - Need for three year funding cycle.
2. ICW Act education needed for tribal governments.

3. Jurisdictional problems:

   - Problems with tribal, state, federal courts accepting jurisdiction: rape, incest, physical abuse, geographic location of offense.

4. Broaden definition of "domicile" to avoid jurisdictional problems.

5. Dependent ward of court placed off reservation.

   - Problem with county court system honoring tribal court order regarding child pick up.

6. Education of state court system (Judicial Qualifications Committee).

7. Whatcom County:

   - Court and Prosecutor's office fail to respond to requests for assistance unless processed through the county court.

8. Legal assistance for child in voluntary relinquishment.

Puyallup Tribe

1. Jurisdiction - problem with state courts regarding transfer.

2. Training of state court judges and attorneys general needed.

3. More adequate funding cycle.

4. Need for legal assistance.

5. Tribal delegation of expert witness:

   - Indian
   - Tribal specific

6. Use state Inter-Local Cooperation Act regarding transfer of protective service investigation.

7. Requirement that all tribal judges have special training on ICW Act and sexual abuse.

8. Act should include sanction of courts and agencies who do not notify tribes.

9. Need for Inter-Tribal Agreements.

10. Legal Assistance (federal, state).

Muckleshoot Tribe

1. Funding.
   - Restrictions on population figures used.
2. Competition causes friction between programs.
   - 3 year cycle
   - set aside for on-going programs
3. Grant application process.
4. State Court:
   - Trouble with youth perpetrators. Forced to use state courts for resources.
5. Notice:
   - Review hearings/kids who have been in care for a long time.
6. Teeth in guidelines to get courts to comply.
7. Monitoring of private agency needed.
8. Confidentiality - what assistance given to parents to learn resources of tribes.
   - Tribe - confidentiality.
9. Need for broadening of tribal/state agreements in cases of group home services.
10. State custody of children in group care.
    - State law - no alternative to public agency (P.L. 272 undoing parts of ICW Act).
11. BIA should be monitoring public and private agencies and state courts.
12. Tribal courts - getting other tribal courts to recognize tribal membership.
13. CPS workers cannot directly file petitions in tribal courts.
14. Identify notification problem in Pierce County (tribal and state courts).

15. Notification of tribes is a problem.
16. Requirement of inter-tribal agreements.

Colville Tribe

1. $1 million should be reinstated.
2. Include "voluntary" removals.
3. Monitoring for compliance to the ICW Act - establish committee.

Yakima Tribe

1. Training on P.L. 272 (Court-State-Tribal Program).
2. Emphasis on cultural relevance in program and courts.
3. Custody issues between relatives.
4. State forcing tribe to adhere to state standards.
   - Beyond licensing standards.
5. Clarification of tribal enrollment in adoption.

Spokane Tribe

1. Funding - ADC.
2. When state court places Indian child within the jurisdiction of a tribal court does the tribal court assume jurisdiction? Clarification of tribal right to assume jurisdiction needed.
3. Divorce proceedings in tribal courts - custody matters. Amend Act to address custody issues.

United Indians of All Tribes Foundation

1. Guardian Ad Litems: Judges place a lot of weight on the recommendations of unknowledgeable non-Indian GALs.
2. Private agencies are not in compliance with the ICW Act. Notification of tribes is a problem.
3. Training of state judges and attorneys.

4. Increase funding.

5. Monitoring of state courts and private agencies.

6. Provision for intervention by urban programs on behalf of tribes.

7. Transfer of jurisdiction to urban programs and tribal council.

8. Private agency compliance should be identified in the ICW Act. Minimal monitoring by DSHS for compliance.

Suquamish Tribe

1. Funding.

2. Juvenile Court cases held off reservation.

    - Intervention prevented.

3. Definition of Indian should include unenrollable Indians.

4. Some tribal court orders not being accepted by state courts and agencies - tribes have to pay for some services.

5. Canadian Indian issues of transfer and services.

Lower Elwha Tribe (via Jan Goslin)

1. Funding.

2. Alternative funding sources - pay for work done by tribal program for DSHS.

3. LICWAC seen as arm of the tribe. There is a need for tribal committee to work with DSHS in instances where parents refuse staffing.

4. Notification to tribes within 72 hours of involuntary placement.

5. Lack of Indian foster homes.

6. DSHS notify by telephone and follow-up with registered letter.

Miscellaneous

1. Designation of a tribe as a public agency would provide tribe with access to confidential information.

2. Monies for children with special needs in P.L. 280 states.

3. Problem of late identification of some Indian children due to appearance.

4. Definition of Indian.

DSHS

See attachment of DSHS comments.

JOHN SPELLMAN
Governor

Karen Rahm
[illegible]
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Olympia, Washington 98504

February 15, 1984

TO: Participants - February 10, 1984. Indian Child Welfare Work Session, Yakima Indian Nation

FROM: Don Milligan Don Milligan
DSHS Indian Affairs

Please find attached the following items:

1. Outline notes prepared by Barb Nenema, Kalispel Tribe, based upon the work session discussion.
2. Resolution submitted by the Colville Tribe.
3. Attendance list for the work session.

Evelyn Blanchard, Association of American Indian and Alaska Native Social Workers, and Betsy Red Bear, Coordinator of the Eastern Washington work session, strongly encourage tribal governments, tribal child welfare programs, and offreservation Indian organizations/programs to do the following:

1. Prepare your separate testimony to submit to the oversight hearing and appropriate legislators using the outline notes as a basis.
2. Submit letters of support and tribal resolutions supporting the attached work session recommendations as soon as possible to Betsy Red Bear.
3. Review and support the work session recommendations developed by tribes and Indian organizations in Western Washington on February 24, 1984. Plans are to consolidate the Eastern and Western Washington work session recommendations into one package for the oversight hearings. It is my understanding that Betsy Red Bear and Goldie Todd will be coordinating the consolidation.

   However, it is important that each tribe, program, and organization submit their own testimony to the hearing in order to show widespread interest and support to the U.S. Congress.

Attachments

Attachment #3

EASTERN WASHINGTON TRIBES MEETING FEBUARY 10, 1984

A.) REVIEW OF CURRENT FINDINGS FROM SEATTLE 19 &20 MEETING:

1. Funding
2. Voluntary proceedings/Notice
   - A. Both Private & State Agencies
     -confidentiality
   - B. Tribal Children's Codes to specify guidelines
     -coordination effort for all Tribes
     1. Domicile
     2. Enforcement within the Act, "Model" guidelines
     3. Enforcement & Monitoring by the Bureau
   - C. Custody Issues, considering the rights of both parent & child
3. Monitoring/compliance
4. Role of the Local Indian Child Welfare Advisory Committee (LICWAC), within the Act the only reference made in this area is as a Higher Standard of Protection.
   - A. There is a need for the issue of an advisory committee to be specifically addressed in the Act.
   - B. Stress the need for Indian participation on off-reservation LICWAC's
5. P.L. 96-272 contradicts the Act on maintaining jurisdiction of Indian children
   - A. State & Federal money
   - B. If Tribes had appropriate funding!
6. Enrollment Issues
   - A. Relinquishment/set requirements for enrollment and/or verification of Indian blood.
7. Placements/State guidelines encourage foster care placements over extended family by giving more money for that type of placement
   - A. Can be addressed in P.L. 96-272
   - B. Standards for foster care, to compare with State
8. Clarification of State Court Transfer (s): to Tribes
   - A. Expand Notice procedure (definition) to also include cases that don't get into Court

9. Domestic Relations/Divorce Proceedings
    A. Custody to non-Indian parent
10. State-Tribal Agreements
    Need for extended definition/clarification
    A. Open for both concurrent & exclusive jurisdiction Tribes
    B. Open for Urban/Rural Indian programs and organizations
11. Urban/Rural (Off-Reservation Indian Issues)
    A. Secondary protection procedure i.e. when jurisdiction is denied by a Tribe, the Off-Reservation program can assume the jurisdiction over the Indian child as an added safeguard

B.) SUMMARY/RECOMMENDATIONS:

1. Funding
    A. Current: competitive
        -appropriated amount
        -638 Social Service Funds
        -Tribal
        -Administration for Children, Youth & Families (ACYF)
        -IHS
        -ANA
        -State Grants
        -Local funds
    B. Need guaranteed funding
        -based on our proposed level
        -entitlement monies
        -adequate funding based on need
    C. A procedure be developed for distribution of funds pursuant to needs
        -BIA/HHS coordinate funding (a mandated allocation plan)
2. Court-Related Issues
    A. Notification/Both voluntary & involuntary proceedings
        1. Identifying whos Indian

      2. Enrollment procedures
      3. Controls for compliance on Private Agencies
      4. Notification State-to-Tribe, Tribe-to-Tribe
      5. Tighten up on BIA monitoring in this area
      6. Prior to going into Court/at the time of intake
      7. Mandate that both Public & Private agencies give notice at the point of intake;
      also other systems/individuals who are involved in the placement process.
   B. Transfers
      1. Problems with the definition of Good Cause to the Contrary
      2. Expert witness definition included
      3. Secondary backup by Off-Reservation programs when jurisdiction is denied by a Tribe
      4. Based on Tribal Soveriegnty, a child who falls within the definition of "Indian" will automatically be eligible for transfer and/or one parent is Indian, that child/case will be eligible for transfer/Notices included
   C. Legal representation for/by Tribes
3. State/Tribal/Urban/Off-Reservation
   A. Establishment of (independent) LICWAC systems/consultants
      1. Uniform guidelines, Tribal first, Off-Res. second
      2. Indian membership
      3. Assist with monitoring responsibilities
   B. State-Tribal Agreements
      1. Need for extended definition/clarification
         -open for both concurrent & exclusive jurisdiction Tribes
         -open for Urban/Rural Indian programs and organizations
         -establish uniform guidelines/standards
4. Compliance Regulation (use supplement)
   A. Mandatory operational & monitoring procedures
   B. Definite line of authority
   C. Establishment of Tribal and Off-Reservation committee's to oversee the monitoring procedures of the Bureau and assist with the operational monitoring plan
      1. Individual State regulations reviewed (annually)
      2. State Court/Agency reporting system (annually)

SUPPLEMENT/COMPLIANCE STRUCTURE
(MONITORING & IMPLEMENTATION RESPONSIBILITIES)

CONGRESS (TWO OVERSITE COMMITTEES)

- BIA
  - CENTRAL
  - AREA
  - AGENCY
- HEW (HHS)
  - -IHS
  - -CHILDREN'S BUREAU
- STATE COURTS (SYSTEM)/ Private Attorneys
- PUBLIC AGENCY (DSHS)
  - LICWAC
- PRIVATE AGENCY
- URBAN INDIAN ORGANIZATIONS

- TRIBAL COUNCIL
  - ADVISORY COMMITTEES
  - TRIBAL PROGRAMS
- TRIBAL COURT
  - CHILDREN'S COURT
    - PROSECUTORS
    - PRIVATE ATTORNEYS
    - LAY COUNSEL
    - PUBLIC DEFENDERS
    - PARENTS/EXTENDED FAMILY/RELATIVES
    - INDIAN CHILDREN

RESOLUTION

WHEREAS, the Colville Business Council is the governing body of the Confederated Tribes of the Colville Indian Reservation, Washington, by authority of the Constitution and By-laws of the Tribes as approved on February 26, 1938, by the Commissioner of Indian Affairs; and

WHEREAS, "The Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U.S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families;"

WHEREAS, "the U.S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture;"

WHEREAS, "the states, exercising Jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families;"

WHEREAS, in order to accomplish the above goals Indian tribal governments, Indian organizations, and the Bureau of Indian Affairs must develop and implement a system for monitoring and technical assistance to state courts, state agencies, and private agencies;

WHEREAS, the Colville Confederated Tribes obtained Exclusive Jurisdiction of Child Welfare matters on February 14, 1980.

THEREFORE, BE IT RESOLVED, that we the Colville Business Council meeting in Session this th day of January, 1984, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby authorize a committee to develop methods of monitoring State Courts on Child Welfare proceedings on a State by State basis.

The foregoing was duly enacted by the Colville Business Council by a vote of FOR AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

Al Aubertin, Chairman
Colville Business Council

Affiliated Tribes of Northwest Indians

RESOLUTION NO. 21

WHEREAS: "The Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U.S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families;"

WHEREAS: "the U.S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian Culture;"

WHEREAS: "the states, exercising Jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families;"

WHEREAS: in order to accomplish the above goals Indian tribal governments, Indian organizations, and the Bureau of Indian Affars must develop and implement a system for monitoring and technical assistance to state courts, state agencies, and private agencies;

THEREFORE, BE IT RESOLVED, that the Affiliated Tribes of Northwest Indians authorizes a working committee of tribal and Indian organization representatives to meet with the BIA Area Director to develop a joint monitoring committee to provide monitoring of and technical assistance to state courts, state agencies, and private agencies on a state-by-state basis.

CERTIFICATION

The foregoing resolution was duly adopted by the Executive Council of the Northwest Indians Spring meeting held in Tacoma, Washington, May 17-19, 1983, with a quorum present and voting.

Delbert Frank, Sr.
Delbert Frank, Sr., President

Virginia Ryan
Virginia Ryan, Executive Director

Attachment #4

MUCKLESHOOT INDIAN TRIBE
39015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 - (206) 939-3311

INDIAN CHILD WELFARE ACT ISSUES

1. Funding level: We would hope that the BIA would allow the Tribe to use population figures based on populations we serve to enable us to obtain funding which would allow for true preventative work with families. Our funding level at this time is more of a "holding" level. Set aside for ongoing funding level to lead to more positive relationships between tribes!

2. Grant application process: The Tribe would support a grant application process involving a three year cycle, rather than yearly as is the current process. We find that much time and energy is devoted to the annual application for ICWA funds that could be more profitably spent serving youth and families.

3. State Court issues: We are concerned about the possibility of not be notified for review hearing of children who have been in the system for many years. We are also concerned about the lack of Court rules standardizing and including ICWA requirements for State Court procedings.

4. Private agencies: Who monitors these agencies for compliance with ICWA? Confidentiality issues are becoming more and more evident when parents request that Tribes not be notified, yet with a private agency/state agency, has there been proper attempt to work with the families concerning Tribal notification of the proceding?

5. State agency/DSHS: Tribal-State agreements seem to be set up by the State as Tribal-Regional agreements; CPS portions of agreements fit into regional arrangements for Muckleshoot, foster care and group care issues cover larger areas. We are concerned about custody issues, especially group care. As per Substitute House Bill No. 848, RCW 74.13.080. and WAC 388-70-013, the State of Washington, DSHS must have custody of all children in Group care in order for the group care facility to receive payment. The Muckleshoot Youth Home, a group care facility, must give DSHS custody of Muckleshoot children who need group care at the Muckleshoot Youth Home. To give DSHS custody of our children in order to be eligible for group care payments seems to contradict the language and intent of the ICWA.

6. Federal agency/BIA: Is it the BIA's responsibility to monitor private agencies, state Courts? How does the regulation concerning the use of attorneys and 638 funds affect ICWA work needing attorneys?

7. Tribal Court: Our main concern here is the inability for the Tribal Court to order services for families, children, and teenage offenders. Tribal Court may request services. Tribal Court may not order a teenage offender into a State facility for juvenile offenders, which then leads to the need for the Tribe to use the state system for these offenses.

Tribal Courts transferring - to other tribal court where child is enrolled - refusing to transfer & question enrollment.

Exclusive jurisdiction and the state prohibition of state CPS workers filing petitions in Tribal Court.

THE SUQUAMISH TRIBE
PORT MADISON INDIAN RESERVATION
RESOLUTION #84-002

WHEREAS, the Suquamish Tribal Council is the duly constituted governing body of the Port Madison Indian Reservation by authority of the Constitution and Bylaws for the Suquamish Tribe of the Port Madison Indian Reservation as approved July 2, 1965, by the Under-Secretary of the Interior; and,

WHEREAS, under the Constitution and Bylaws of the Tribe, the Suquamish Tribal Council is charged with the duty of protecting the health, security, and general welfare of the Suquamish Tribe and all Reservation Residents; and,

WHEREAS, the Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U.S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the break-up of Indian families; and

WHEREAS, the U.S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stability and security of Indian Tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which reflect the unique values of Indian culture; and,

WHEREAS, the current funding levels provided for this purpose are wholly inadequate, and further proposed reductions seriously imperil the ability of Indian Child Welfare Act programs to provide the basic services required in pursuit of the above policy goals;

THEREFORE BE IT RESOLVED, that the Suquamish Tribe requests that Governor Spellman communicate with the Washington Congressional delegation regarding the need for:

1. Restoration of the $1 million cut from the Indian Child Welfare Act program appropriations for Fiscal Year 1984;
2. An appropriation of $15 million for Indian Child Welfare Act programs for Fiscal Year 1985; and
3. Regional hearings to provide Congress with information necessary to ensure equitable and knowledgeable decisions regarding the future of these programs.

CERTIFICATION

The foregoing resolution was duly enacted by the Suquamish Tribal Council, meeting in REGULAR SESSION on this 16th day of JAN, 1983, by a vote of 4 FOR, 0 AGAINST, 0 ABSTENTIONS, at which a quorum was present.

BY:

Lawrence A. Webster
Tribal Chairperson

ATTEST:

Bennie J. Armstrong
Tribal Council Secretary

1-17-84
Date Mailed to BIA

JR
Initial

RESOLUTION

WHEREAS, the Colville Business Council is the governing body of the Confederated Tribes of the Colville Indian Reservation, Washington, by authority of the Constitution and By-laws of the Tribes as approved on February 26, 1938, by the Commissioner of Indian Affairs; and

WHEREAS, "The Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U.S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families;" and

WHEREAS, "the U.S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture;" and

WHEREAS, "the states, exercising Jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families;" and

WHEREAS, in order to accomplish the above goals Indian tribal governments, Indian organizations, and the Bureau of Indian Affairs must develop and implement a system for monitoring and technical assistance to state courts, state agencies, and private agencies; and

WHEREAS, the Colville Confederated Tribes obtained Exclusive Jurisdiction of Child Welfare matters on February 14, 1980.

THEREFORE, BE IT RESOLVED, that we the Colville Business Council meeting in Session this th day of January, 1984, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby recommend an appropriated amount of $15 M for purposes of implementing the Indian Child Welfare Act.

The foregoing was duly enacted by the Colville Business Council by a vote of FOR AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

Al Aubertin, Chairman
Colville Business Council

1945 Yale Place East
Seattle, Washington 98102
February 07, 1984

Mr. Don Milligan
Indian Affairs
Mailstop OB14
Olympia, Wa. 98504

Dear Don:

The Indian Child Welfare Advisory Committee is an Advisory Committee to the Department of Social and Health Services - Region IV. We are a voluntary group of Indian people who have concerns about the welfare of Indian children in foster care. It is our primary goal to implement the regulations of The Indian Child Welfare Act of 1978. In our effort to do this we have some barriers to implementation, our concerns are:

1) Judges are insensitive and uninformed about the mandates of The Indian Child Welfare Act. Often they need to be educated on the spot.
2) Guardian Ad Litems Attorney's are unaware of The Act and need to be sensitized to the significant importance of this law.
3) ☆ Private agencies are not aware of the Act and (again) don't realize the importance. We have begun talking with private agencies, but monitoring their follow-through activities is not always possible. Often notification to Tribal Courts from private agencies is not done.
4) Grant process is difficult and the funding level inadequate. Tribal and Urban Indian Child Welfare Programs are in jeopardy. Funding is not sufficient to meet the overwhelming needs.
5) Expert witness needs to be better defined, "How do you qualify." The court does not acknowledge elders and Spiritual leaders as expert witness and these people are expert witnesses.

RECEIVED
FEB 9
DSHS - OFFICE OF

6) Canadian Indian Children and families are not protected. Many of our children are from Canada. The Indian Child Welfare Act does not attempt to protect them. Our Washington State Administrative Code protects them but we need Federal protection for these young Canadian Indian children.

We need to amend the Indian Child welfare Act to address these concerns. We as a Committee would like to recommend that the Act be amended to address these issues; inclusion of Canadian Indian children, more clarification of "expert witness", to include elders and spiritual leaders and increased funding level.

Increased funding to train and educate private agencies and monitor them. Training to educate judges and lawyers and G.A.L.S. Lastly, continued funding for Indian Child Welfare Programs, both Urban and Tribal. We should not have to beg for money each year.

Cordially,

Esther Crawford,
Chairwoman
Indian Child Welfare Committee

cc: ICWAC Members
D.S.H.S., Indian Desk Region IV

JOHN SPELLMAN
Governor

ALAN J. GIBBS
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Olympia, Washington 98504

February 14, 1983

Greg Argel
Association on American
Indian Affairs
432 Park Avenue South
New York, New York 10016

212-689-8720

Dear Greg:

Per our discussion I am submitting some initial recommendations of issues that may need to be addressed through amendment of the Indian Child Welfare Act:

1. Canadian Indians

Also unenrollable

Due to our geographical location we have a fair number of child welfare cases involving Canadian Indians. The federal law does not protect Canadian Indian children and families. Our Washington Administrative Code attempts to protect them, but we are in need of legislative relief.

2. Funding

Should be entitlement rather than discretionary

The continuation of funding for both tribal and off-reservation Indian child welfare programs is a priority issue. If the funding is reduced and then eliminated as we understand the plan to be, the Indian Child Welfare effort will revert to the 1960's era and before.

3. Monitoring

There is dire need for a legislatively established system for monitoring state courts', state agencies', and private agencies', compliance with the Indian Child Welfare Act. My recommendation is that joint monitoring/technical assistance committee composed of Indian and BIA repesentatives be established for each BIA Area Office jurisdiction.

4. A discussion with Barbara Wright from our agency's Assistant Attorney General's staff identified the followign issues:

a. Voluntary Relinquishments

Currently, Indian Tribal Councils and Tribal Courts do not receive notice of voluntary relinquishments. Although, the issue

Attachment #5

of "confidentiality" is involved, we are also concerned that this perpetuates a "loophole" for inappropriate placement of Indian children into non-Indian homes. At a bare minimum, there should be a requirement for Indian-oriented counseling of parents prior to their final decision to voluntarily relinquish a child.

b. Expert Witness

There appears to be too much flexibility in respect to:

1. Who qualifies an expert witness?

2. What is an expert witness?

Our concern is that "anti-Indian" expert witnesses on Indian Child Welfare cases may be brought in for the purpose of overriding positive Indian Child Welfare planning.

c. CPS Emergency Removal/Exclusive Tribal Jurisdiction

There appears to be a questionable gap in the current legislation in situations where a tribe has exclusive tribal jurisdiction but may not have the program resources to respond rapidly to the need for a child protection services emergency removal situation. In Washington, it appears that the Assistant Attorney General's Office has continued to cite the state's responsibility to do child protection/abuse investigation on reservations where tribes have exclusive jurisdiction even though the state does not have the authority to remove a child in emergent danger nor refer the matter for court action. Perhaps, this issue should receive some attention.

I will forward any other issues brought to my attention.

Sincerely,

Don Milligan

Don Milligan
DSHS Indian Affairs
MS OB-14
Olympia, Washington 98504

cc: Barbara Wright
Evelyn Blanchard
Goldie Todd

JOHN SPELLMAN
Governor

KAREN RAHM
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Olympia, Washington 98504

December 28, 1983

TO: Regional Administrators

FROM: Bob [illegible]

SUBJECT: REQUEST FOR RECOMMENDATIONS RELATED TO THE POSSIBLE AMENDMENT OF THE INDIAN CHILD WELFARE ACT

It is my understanding that the U.S. Senate will be holding hearings possibly in late February or March 1984 on potential amendment of the Indian Child Welfare Act.

I am asking each of you to obtain recommendations from your regional office staff, CSO administrators, caseworkers serving Indian cases, Indian community workers, and local Indian child welfare advisory committees. Focus on those aspects of the act that have encouraged progress and those aspects of the act which have resulted in implementation problems for DSHS, state courts, tribal courts, and Indian child welfare programs from your point of view. Your recommendations and comments will be shared with Indian representatives.

Please have the recommendations to Don Milligan, Office of Indian Affairs, Mail Stop OB 14, by January 13, 1984 because they are needed for discussion at a meeting of Indian representatives on January 19. Thank you.

cc: ✓Don Milligan
Barbara Wright

THE SEAL OF THE STATE OF WASHINGTON 1889

OFFICE OF THE ATTORNEY GENERAL

Inter-office Correspondence **Date:** January 17, 1984

To: Don Milligan

From: Barbara Wright

Subject: The Indian Child Welfare Act, Concerns and Recommendations

The concerns and recommendations I have listed in this memo are my personal opinions rather than opinions of the Attorney General's Office, and are based upon 4 1/2 years of working with the ICWA in the Attorney General's Office.

The intent and spirit of the Indian Child Welfare Act is to have Indian children remain with Indian people. A basic concern that I have, as do others in my office who work with the ICWA, is that the lack of funding to tribes serves to undercut the tribes' (and the State's) ability to carry out the purpose of the Act. In addition, Public Law 96-272 is in direct conflict with the intent of the ICWA because it imposes continuous State supervison and control over the licensing and payment process and does not lead to tribal autonomy in the child welfare area.

The Act gives tribes that have exclusive jurisdiction over child custody proceedings, jurisdiction over "an Indian child who resides or is domiciled within the reservation." From this I assume that such tribes have jurisdiction over Indian children who are not tribal members. It is unclear whether the same applies to tribes with concurrent jurisdiction, because the Act does not address that specific issue.

Section 1912 of the ICWA requires that notice to an unknown or unavailable parent be given to the Bureau of Indian Affairs. The BIA does not seem to be very effective in finding parents and transmitting information to parents.

Section 1915 allows the placement preference of the Indian child or parent to be considered where appropriate in a foster or adoptive placement. The court or agency is also to give weight to a consenting parent's desire for anonymity in applying the placement preferences. The result is that the State caseworkers are often put in a very difficult position when trying to place a child pursuant to the placement preferences; and on many ocassions the desire of the parent or child has effectively overriden the intent and the placement preferences of the ICWA.

In summary, my strongest recommendations are that tribes be given enough money to implement the Indian Child Welfare Act and that federal laws which act to undermine the Indian Child Welfare Act be changed.

I also recommend that the Indian Child Welfare Act be specific as to how much authority tribes with concurrent jurisdiction have over Indian children who are not their tribal members. All Indian children within a reservation should be covered by the authority of tribal courts regardless of exclusive or concurrent jurisdiction status of the tribe. It would then be up to the tribe to chose to assert such jurisdiction based upon their funding, court structure, and so on.

The placement preferences and desire for anonymity of the Indian parent should not be allowed to override the intent and the placement preferences of the Indian Child Welfare Act.

cc: Bruce Clausen
Teresa Kulick

JOHN SPELLMAN
Governor

Karen Rahm
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Don Milligan
Office of Indian Affairs
MS 0B-14

DATE: January 12,1984

FROM: Thomas J. Berg
Administrator
Spokane East CSO

SUBJECT: RECOMMENDATIONS RELATED TO THE POSSIBLE AMENDMENT OF THE INDIAN CHILD WELFARE ACT

My staff have contacted numerous local individuals regarding assessment of helpful or deterimental aspects of the Indian Child Welfare act. These individuals included Community representatives, local Indian Child Welfare advisory committee members, the DSHS liaison to the local ICWAC and other staff members in the CSO.

The DSHS liaison to the local ICWAC plans to ask the committee as a whole to send recommendations to the Office of Indian Affairs. The liaison is aware of the January 19, 1984 statewide meeting of Indian representatives and will encourage the local ICWAC to send recommendations in prior to that date.

CSO staff recommendations relate to the application and some procedures under the law rather than the law itself. In general, caseworkers agree with the purpose and philosopy of the Act. The local ICWAC has been supportive and staff view the required staffing with ICWAC to develop a case plan as positive procedure.

The problems noted by staff center around the time needed to complete the additional required forms and staffings for Indian children. The operation of giving notice to the tribe is of particular concern because of the difficulty and the time required in determining what tribes to notify. Finally, questions have been raised about the need to have a representative from the child's particular tribe involved in the planning in addition to the local ICWAC.

In summary, the CSO staff's recommendations are to streamline the process required to comply with the Indian Child Welfare Act. Also, I would suggest contacting the Attorney General's Office for specific recommendations about the law itself.

TJB:cb
cc: Bernard O. Nelson, Regional Admin.

RECEIVED
JAN 16
DSHS - OFFICE OF
[illegible]

JOHN SPELLMAN
Governor

Karen Ral
XXXXXXXXX
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Don Milligan
Office of Indian Affairs - OB-14

DATE: January 11, 1984

FROM: James A. Ross, Administrator
Spokane North CSO

SUBJECT: REQUESTS FOR RECOMMENDATIONS RELATED TO THE POSSIBLE AMENDMENT OF THE INDIAN CHILD WELFARE ACT

This request was discussed with staff. The Indian Child Welfare Act was reviewed in relation to the areas suggested. It was determined we have not had any outstanding problems in the implementation of the Act. Therefore, we did not arrive at any changes to recommend.

JAR:ES:se

cc: Bernard O. Nelson, Regional Administrator

[illegible]

RECEIVED
JAN 16
DSHS - OFFICE OF

JOHN SPELLMAN
Governor

Karen Rah
[illegible]
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Dan Milligan, Office of Indian Affairs
Mail Stop 08-14
Olympia, WA

DATE: January 9, 1984

FROM: Dean Dunhaver, Administrator
Grant/Adams Administrative Unit
Moses Lake CSO 813-2

SUBJECT: INDIAN CHILD WELFARE ACT

The following are concerns the Grant/Adams CSO has about the current Indian Child Welfare Act:

1. The legal process on Indian children is slow and children remain in foster care too long.
2. There are not enough Indian foster homes to meet the criteria set out in the Act.

The Act addresses a definite need and is a positive step.

JD:RET:gy

cc: Bernard O. Nelson, Regional Administrator, Region I

RECEIVED
JAN 11
DSHS - OFFICE OF
[illegible]

JOHN SPELLMAN
Governor

Karen Rahm
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Don Milligan
Office of Indian Affairs, Mail Stop OB-14

DATE: January 12, 1984

FROM: Ben Green, Administrator
Wenatchee CSO

555-1541

SUBJECT: RECOMMENDATIONS RELATED TO AMENDMENT OF INDIAN CHILD WELFARE ACT - YOUR MEMO OF JANUARY 3, 1984

The one area in which we have had the most difficulty relates to Adoption Planning for Indian Children, Manual G 36.38. It is often difficult to ascertain eligibility for enrollment. This requires much correspondence.

The other area is that of the Unenrolled Indian. That also requires in-depth research.

It would be helpful to us if the definitions of these criteria were spelled out more fully.

BG:GE:es

cc Bernard O. Nelson
Region 1

RECEIVED
JAN 16
DSHS OFFICE OF

JOHN SPELLMAN
Governor

ALAN J. GIBBS
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Don Milligan
Office of Indian Affairs OB-14
Olympia

DATE: January 11, 1984

FROM: Kathy McCracken, Administrator
Okanogan CSO

SUBJECT: REQUESTS FOR RECOMMENDATIONS RELATED TO THE POSSIBLE AMENDMENT OF THE INDIAN CHILD WELFARE ACT

In this area we could find no consensus nor strong opinions about recommended amendments to the Indian Child Welfare Act.

We found concern expressed on basically three aspects of the law by some individuals:

1. There are still too many Indian children being placed in non-Indian homes and perhaps it would improve if the law had a stronger way to compel that the law be followed.
2. The opinions and advice of the extended family regarding planning for the children has not always been given serious consideration.
3. There is a lack of tribal control or right to intervene in adoptions where individuals have relinquished a child directly to other individuals.

Most of the contacts with CSO staff, community representatives, and some ICWAC members indicated that they had no real criticism of the law but there was a lot of concern about the (implementation of the act.) It was felt that perhaps the terms of the law were not interpreted as clearly and as strictly as the law allowed and that clear guidelines and resources be provided with the law for a smoother implementation.

KM/nh

Attachment

cc: Bernard O. Nelson
Ella Medonich

RECEIVED
JAN 16
DSHS - OFFICE OF

JOHN SPELLMAN
Governor

ALAN J. GIBBS
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Don Milligan
Office of Indian Affairs
Mail Stop OB-14
Olympia, WA

FROM: Elaine White, Administrator
Colfax C.S.O., Pullman Branch Office

DATE: January 10, 1984

SUBJECT: Possible Amendments to Indian Child Welfare Act

We have contacted our casework staff, and Community resources in an effort to gather feedback on possible amendment to the Indian Child Welfare Act. Of course, it must be noted that our catchment area does not afford us with a great many opportunities to exercise the ICWA. Our volume of cases involving Native American children has been three children in the last two years. Therefore, each time we do encounter the need to consult the Act we basically need to relearn the process.

We were able to get some feedback that reflects a positive attitude on the part of caseworkers who work with the LICWAC in terms of having a good relationship.

Concerns that were expressed by the member of the local committee were more general in nature and scope. These concerns dealt with a perceived need to address the issue of using Guardians ad Litem who were either Native American or sensitive to Native American issues. A possible problem area, and past concern, was that courts tend to give more weight to the recommendations of the Guardian ad Litem, regardless of the recommendation of the LICWAC. It is suggested that amendments may possibly address this issue.

In addition, concerns also dealt with the issue of private organizations going onto the reservations and dealing with families for private adoption. Currently there is no check or safeguard to ensure that people who live on the reservations are not misled or exploited by religious groups or private organizations.

We hope these thoughts will be helpful to you.

EGW:DRW:cr

cc: Bernard O. Nelson
Region 1

RECEIVED
JAN 12
[illegible] - OFFICE OF

JOHN SPELLMAN
Governor

ALAN J. GIBBS
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Don Milligan,
Office of Indians Affairs 08-14
Olympia, Washington

DATE: January 13, 1984

FROM: Janet Thomas, Administrator
Tri-County CSO
Colville, Washington

SUBJECT: REQUESTS FOR RECOMMENDATIONS RELATED TO THE POSSIBLE AMENDMENT OF THE INDIAN CHILD WELFARE ACT

This is in response to Bernard Nelson's memorandum of January 3, 1984 on the above subject.

I would like to see safeguards for the rights of Indian children and families involved in dependency proceedings. A guardian ad litem appointed for the child would protect their rights under the state or tribal system.

Provisions of Public Law 96-272 and the protection therein should be extended to the children and families under the jurisdiction of tribal court.

JT:skl

Attach.

cc: Bernard Nelson

RECEIVED
JAN 17
DSHS - OFFICE OF

JOHN SPELLMAN
Governor

c/Don Milligan

KAREN RAHM
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Robert Lolcama, Deputy Assistant Secretary
Community Services MS OB-44D

DATE: January 12, 1984

FROM: Ralph E. Mackey, Regional Administrator
Region 2 MS B39-6

SUBJECT: INDIAN CHILD WELFARE ACT

Thank you for this opportunity to comment relating to possible amendments of the Indian Child Welfare Act. We find the act to provide useful guidelines in working with Indian children and families. There are several areas, however, which are not entirely clear or about which questions have arisen in the field.

(1) One of the most difficult barriers we find to full implementation of the intent of the Act is the shortage of funding for the Indian Child and Family Service Program as described in Section 201. As you know, although the Yakima tribe has exclusive jurisdiction, the child and family program is not fully funded. This situation leads to frustrated expectations for both tribal members and other community agencies, as well as leaving the department to provide services to a number of Indian children and families, who, given adequate funding, could be served by their tribal program instead.

(2) There seems to be some ambiguity about jurisdiction in the case of an Indian child belonging to one tribe and domiciled on the reservation of another tribe. This comes up when the child's parent objects to the local tribal court's hearing the case, preferring it to be heard in state court. Do they have this right? Would agreements between tribes regarding assumption of jurisdiction for child welfare cases influence parents' freedom, if any, to chose the court?

(3) Does section 301, concerning record keeping on adopted Indian children, conflict with state adoption statutes providing for confidentiality?

(4) Is there a conflict between 95-608 (e.g., section 101 (a)) and state law which requires that the department have custody of all children placed in group care when we make payment?

(5) Most of the Act seems to address practites in state court, rather than internal tribal court practices. Should the Act concern itself with guidelines for tribal court, especially in the area of legal counsel and notice of hearings?

(6) The Act does not seem to address investigation of Child Protective Services complaints very fully, particularly for children domiciled on a reservation.

(7) Expert witnesses, as referred to in section 102(e) are not defined.

cc: CSO Adm.

RECEIVED
JAN 17
DSHS - OFFICE OF [illegible]

JOHN SPELLMAN
Governor

ALAN J. GIBBS
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

RECEIVED
JAN 23
DSHS - OFFICE OF
INDIAN AFFAIRS

MEMORANDUM

TO: Don Milligan
Office of Indian Affairs OB 14

DATE: January 13, 1984

FROM: Jane Hawkins, Acting SDC IV JH
Region 3 N31-7

SUBJECT: Indian Child Welfare Act Amendment

Following are our recommendations related to the possible amendment of the Indian Child Welfare Act:

1. More adequate and consistent funding is needed for staffing and program development to prevent personnel turnover and to ensure continuity.

2. Encouraging training, adequate staffing and a tribal support system that could accept jurisdiction and be able to deal with the notices in a timely and effective way.

3. Continue the appropriate training of state judges and the Attorney General's offices with reference to this Act.

4. Encouraging the Indian groups to assume more responsibility for continuation of major service provision.

5. Training and orientation of tribal court judges to their role in the juvenile family arena.

6. Continuation of healthy communication channels between tribes, Indian organizations and the state legal system.

7. Continue to serve and preserve the rights of bi-racial persons who would choose to be considered Indian, whether or not they are enrollable.

8. Preserve the safeguards that have been provided so that the Indian parent may reconsider and retrack earlier decisions that may not have been made with clear understanding and considered judgment.

9. The ICWA needs to spell out in more detail the necessary response required of state judicial systems to honor tribal courts and their orders without jurisdictional hang-ups.

10. Cooperative or reciprocal agreements should be negotiated across the international boundary to preserve the cultural variance when it does exist.

11. In C. Criterial and Procedures for ruling on25 USC 1911 (b) Transfer Petitions remove "unless either parent objects to such transfer" and instead assume that if one parent wishes transfer that is sufficient reason for transfer.

JH:cb

JOHN SPELLMAN
Governor

KAREN RAHM
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Don Milligan, Chief
Office of Indian Affairs OB-14

DATE: January 16, 1984

FROM: John Leonard, Administrator N56-1
Central Children's Service Office

SUBJECT: Amendments to the Indian Child Welfare Act

In reviewing the Indian Child Welfare Act and the implementation of, our primary concern is the lack of compliance by a significant number of public and private agencies. This concern is based on situations experien~~ced by~~ the Region 4 Indian Children's Unit.

Several obstacles have been encountered in following the mandates of the Act, and in enforcing the policies set forth in WAC. Specifically, Judges in King County appear to lack understanding of the Act. There is a general lack of recognition for the unique political and cultural status of Indian people. Court decisions have been rendered which have gone against the intent of the Act. Bad precedents have been set for future cases (e.g. maintaining Indian children in non-Indian placements when family or Indian resources were available). It's recommended training be made mandatory for Judges who preside over Indian Child Welfare cases.

A related area of concern has been the Guardian Ad Litem (GAL) program. At times GAL's assigned to Indian cases appear to lack understanding of the Act, as well as a lack of cultural awareness. The Guardian Ad Litem program provides a valuable service, but certain recommendations in Indian cases have proven problematic when those recommendations go against the mandates of the Act.

Indian cases serviced by private agencies is another area of concern. There have been a number of instances of non-compliance by private agencies. Presently, there is not a system to monitor private agencies. Region 4 DSHS and the LICWAC have sought to establish informal agreements with the various private agencies to staff their Indian cases. Unfortunately there has been a number of problems. A legally mandated system of monitoring needs to be considered.

Specific items in the Act itself needs addressing. First, it's recommended Canadian Indians be covered under the provisions of the Act. Washington State law has some limited provisions, but federal legislation is needed to ensure the protection of Canadian children. Region 4's Indian Children's Unit services a number of Canadian families.

RECEIVED
JAN 17

In Section 105 (a) and (b) the phrase "in the absence of good cause to the contrary" refers to placement preference. This phrase has been used when the preference was not followed. The interpretation of this phrase has been the basis for non-compliance with the preference and has resulted in prolonged non-Indian placements of Indian children. The phrase should be eliminated or revised to reflect the importance of placement priorities. A related item is the need to clarify the order of placement preferences. It should be made clear the preference is to be followed in "sequence" from Item i to Item iv in Section 105 (b) and not that there exists a "choice" amoung the preferences.

Clarification of an agreed dependency orders are needed. It is unclear if an agreed dependency order needs to be signed in the presence of a judge. Also, there is concern about the provision allowing a voluntary relinquishment to be withdrawn prior to a termination order and/or adoption decree. Precarious situations have occurred for both the child and the prospective adoptive family. These two items have been raised for future discussion, no specific recommendations can be given at this time.

The Region 4 Indian Child Welfare Advisory Committee has received materials regarding the upcoming Senate Hearings. Members plan to present their recommendations to Indian representatives at the scheduled meeting on 1/19/84 and 1/20/84.

The Indian Child Welfare Act is vital to the preservation of Indian families and we look forward to continued coordinated efforts in assuring its implementation.

JDL:ckz

cc: Ralph Dunbar

JOHN SPELLMAN
Governor

KAREN RAHM
Secretary

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Don Milligan
Office of Indian Affairs
M/S OB 14

DATE: January 12, 1984

FROM: Bernice Morehead
Regional Administrator
Region 5 M/S N 27-5

SUBJECT: RECOMMENDATIONS RELATED TO THE POSSIBLE AMENDMENT OF THE INDIAN CHILD WELFARE ACT

The following recommendations and comments were obtained from our local Indian Child Welfare Advisory Committee members and Indian Community Worker.

The Indian Child Welfare Act is, in and of itself, viewed as a positive move to protect the best interests of the Indian child and his/her unique culture and heritage. Certainly it has heightened awareness in our communities for both Indian and non-Indian people and has improved Department child welfare services to children and their families.

Aspects of the Act which have resulted in implementation problems include: 1) The act did not provide funding for education. As a result, it has taken a long time for DSHS staff and community agencies staff to familiarize themselves with the Act, relevant WAC and Manual material. The need for education is constant as new staff become involved with Indian children. 2) When a child is placed into out-of-home care the Tribe must be notified. There is no language in the Indian Child Welfare Act stating that the Tribe must respond to the notification. A requirement for response from the Tribe within a limited time frame would be helpful. 3) The Act does not delineate responsibilities to Canadian Indian children. Because this is overlooked in the Act, some Canadian Indians in the United States suffer from lack of services. 4) For children in the custody of Tribal Courts, the Act would be improved by including language to mandate a structure similar to the Interstate Compact. This would allow children from other States to be served more equitably. Because there is no interstate agreement, or funding, some children are stranded away from their Tribes.

Local difficulties in implementing the Indian Child Welfare Act include: A) A need for stronger representation from local native American communities on the local Indian Child Welfare Advisory Committee. B) Obtaining sufficient information to determine a child's Indianness as it is defined in the Act and the broader State definition.

If you have questions or need additional information, please contact Kristy Zoeller, Social Service Coordinator at Scan 462-2922.

cc: Robert Lolcama

RECEIVED
JAN 16
DSHS - OFFICE OF [illegible]

Wisconsin Winnebago Business Committee
Department of Health & Social Services
P.O. Box 311 — Tomah, Wisconsin 54660

Health Management Services
(608) 372-2847

Community Health Representative/
Maternal & Child Health

Contract Health Service
(608) 372-2847

Mental Health Program

Indian Child Welfare
(608) 372-2847

EHC - Alcoholism Counseling Services

TRAILS Programs
(608) 372-6819

EHC - Social Services

EHC - Community Health Nursing
(715) 284-2367
(608) 372-2416

Foster Grandparent Program
(608) 372-6819

Work Experience Program
(608) 372-6819

Elderly Program
(608) 372-5819

May 30, 1984

RECEIVED JUN 0 4 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

RE: Indian Child Welfare
Oversight Hearings

Dear Senator Andrews:

The Wisconsin Winnebago Tribe need to be heard on this issue. The Tribe does not have a reservation in Wisconsin. We have scattered settlements within a fourteen(14) county area in central Wisconsin. This is the area I, as Indian Child Welfare Worker, must cover, plus the urban areas such as Milwaukee, Chicago, and Minneapolis/St. Paul. I also have cases in California and Montana. My 1984-85 Indian Child Welfare proposal was funded for $35,770. How is one Worker supposed to effectively serve 3200+ Winnebagos in this geographical area with very little funding.

I wrote 1984-85 I.C.W. proposal for $49,437.36 using statistics(population) from 1981 B.I.A. Labor Task Force Report, which is 1,718. A very minimal number because B.I.A. does not allow us to use the actual number which is 3200+. If we were to use the actual number, we would be eligible for up to $150,000. Proposal I had written for $49,437.36 was based on very minimal salaries(one I.C.W. Worker and one part-time assistant), travel, space cost, and other costs. Even then it was reduced to $35,770. The lack of funds definitely effects delivery of service to the Winnebago Tribe. I have broken down these areas of the Indian Child Welfare Act:

I. Intervention
  A. Court notices
    1. Legal counsel
    2. Travel and/or transportation
    3. Follow-up; supervision
    4. Counseling for parents and children
    5. Locating and communicating with extended family members
    6. Locating adoptive home when termination of parental rights occurs
    7. Having consistent working relationship with the 14 counties(cooperation)
    8. Time to locate or start resources for Indian children i.e specialized foster homes, Indian group homes, facilities for emotionally disturbed and/or special needs children
II. Recruitment of foster homes
  A. Going to the four(4) major areas to locate Indian foster homes

- B. Going to the counties, to work with Indian people on licensing
  - 1. Educating state, regional, and county departments of health and social services staff on Winnebago culture and values
    - a. Consultants
    - b. Workshops and seminars
- C. Alternatives in licensing procedures that would fit the needs of our cultural values

- III. Providing supportive services in all our communities
  - A. Support groups for parents and their children
    - 1. Also for foster parents
  - B. Workshops and seminars for these groups
    - 1. Cultural and/or counseling type
      - a. Involvement from tribal elders
      - b. As well as those from helping professions
- IV. Training expenses

I am really caught in a dilemma. Ashland Area Office of the Bureau of Indian Affairs keeps telling us budgets are being reduced, but it doesn't seem to effect their salaries and retirements. The Wisconsin Winnebagos need at least two(2) I.C.W. workers and one full-time secretary/assistant. The fourteen(14) county area can be divided between the two(2) I.C.W. workers and the secretary/assistant can manage the office. As it is now, one worker has to to try to cover as much as possible. Many times I spread myself pretty thin. I feel hurt because I know I am not serving the people as well as I should. I hope you sincerely consider our testimonies for the sake of Indian children and their families.

If any of the points I mentioned are not clear, please contact me and I will clarify them for you.

Thank you.

Respectfully submitted,

Faye E. Thunder

Faye E. Thunder
Indian Child Welfare Coordinator
Wisconsin Winnebago Tribe

YANKTON SIOUX BUSINESS
& CLAIMS COMMITTEE

P.O. Box 248 * Marty, South Dakota 57361 Phone No. 384-3804
384-5687

RECEIVED MAY 15 1984

May 10,1984

Select Committee on Indian Affairs
Mr. Mark Andrews, Chairman
U.S. Senate
Washington, D.C.

Dear Sirs:

We offer our appreciation for the opportunity to provide you with our testimony regarding the deficiency's in the Indian Child Welfare Act of 1978.

Our testimony shall only address the Title II component of the Act. The remaining Title I, III and IV, we request another time and place in which to address the deficiency's in these area's.

The biggest problems we are facing, when providing an already determined needed Child Welfare Service, is that of the funding criteria.

We strongly feel, that the Title II funding component should not be a competitive grant award, but rather an entitlement to all federally recognized or urban Indian populations.

The funding criteria change, would enable a Tribe or any Indian Child Welfare Service Program to provide a consistent cultural relevent service to its children and families. This is one of the basic intents of the Act. Currently a Child Welfare Program does not have the financial security it needs, to continue providing consistent service after a year. Most Child Welfare cases require an on going service.

Further, the funding level is extremely low when considering the population served. An example of this, is that our Tribe has an enrollment of approximately 5,500 and our funding consideration is based on, on-reservation population. This is in no regard to the fact that we serve our tribal people no matter where they are. We request that the funding level be reconsidered, which would enable a Indian Child Welfare Program to provide a competent and capable program.

With these factors addressed accordingly, we feel we can provide a beneficial service to our children and people.

The remaining Title of the Act again, we request more time to prepare our testimony.

I thank-you all for your help.

Sincerely,

Alvin R. Zephier
Alvin R. Zephier
Y.S.T. Chairman

RECEIVED [illegible] 30 1984

May 21, 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510
Attn: Pete Taylor

Dear Senator Andrews and Mr. taylor:

This letter is in reference to the Indian Child Welfare Act, Public Law 95-608. During the past two years I have served on the Oneida Child Protective Board, a board the Oneida Tribe of Indians of Wisconsin has vested with authority over child custody proceedings. Our Board acts in place of a Tribal Court reviewing cases and making recommendations to the State Court on behalf of the tribe. I have become somewhat familiar with the Indian Child Welfare Act and would like to submit the following request for changes in the Act:

Title 1 - Child Custody Proceedings
Section 101

(b) In any State Court proceeding for the foster care placement of, or termination of parental rights to an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe,.... upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

Note that "absent objection by either parent" has been deleted. It has been my experience that cases arise where a parent objects to the tribe's jurisdiction. When a parent objects to this intervention by the tribe, an Oneida child can be placed in a nonIndian foster home. When the Tribe is not involved in a termination of parental rights hearing, there is no opportunity for the Tribe to locate suitable Oneida adoptive families, This does not reflect the unique value of Oneida culture and also separates the Oneida child from the extended family. I strongly recommend "absent objection by either parent" be deleted so *all* state court proceedings for foster care placement and termination of parental rights are transfered to the jurisdiction of the Oneida tribe.

Title I Section 102

(a) . . . No foster care placement or termination of parental rights proceeding shall be held until at least "twenty" days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to *twenty* additional days to prepare for such proceeding.

The change in Section 102(a) is in the last sentence: change from ten days after receipt of notice to *twenty* days after receipt of notice. Ten days does not allow the tribal case worker sufficient time to conduct a complete and thorough investigation of the case. The caseworker has to gather information from various *agencies*, often from other counties and states, and ten days does not provide enough time for this.

Title I Section 106

(a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, "a biological parent or prior Indian custodian must be notified of this proceeding by registered mail with return receipt requested and the Indian child's tribe must also be notified of this proceeding". A biological parent or prior Indian custodian may petition..." continue on as in the Act.

I have added the above section to insure that the biological parent or prior Indian custodian and the tribe receive notice of the proceeding. This provides the opportunity for the child to be placed with the Oneida family, or if the prior custodian or parent cannot care for the child it provides for placement in the child's community.

Title II - Indian Child and Family Programs Section 201 (a) 7.

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

I see no funds available for this subsidy program. Many Indian families have a minimal income, are willing to take another child as their own but simply do not have the income to support another child. Appropriating funds for the subsidy program can aid in keeping Oneida Children in the Oneida Community.

Another area of concern is the adoption process for Indian parents. The adoptive parents must pay attorney fees, court and filing fees, and an initial fee for an adoption study. The cost of an adoption study alone is around $1,500, an amount very few Indian families can pay. I urge that

section 8 be added to include:
Title II Section 201(a)
8. Adoption assistance for adoptive Indian parents including all costs involved in the adoption process for an Indian child.

The intent of the Act is to protect the best interests of the Indian child and to promote the stability and security of Indian tribes and families and I urge you to work toward appropriating funds to fully implement the act.

The Indian Child Welfare Act is a great step forward for Indian people, and with your help, we can utilize the act to its intended capacity. I thank you for this opportunity to express my concerns and look forward to even more implementation of the Act.

Sincerely,

Sandra L. Hill, Chairperson
Oneida Child Protective Board
Oneida, Wisconsin